Supreme Court, U.S.
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In The

Supreme Court of the United States

W.J. SPRADLEY, JR., EDWARD CAMPBELL and VIRGINIA CAMPBELL CARDIN as Representatives of the CAMPBELL REUNION MEMORIAL,

Petitioners,

vs.

OLD HARMONY BAPTIST CHURCH, BOARD OF TRUSTEES OF THE OLD HARMONY BAPTIST CHURCH, WILLIAM BAILEY, JAMES EMORY SPRADLEY, WAYNE HEATHERLY, RODNEY WATTS, WILLIAM E. REAMS as Personal Representative De Bonis Nonadministratis of the Estate of RICHARD SAMPSON PORTER (Intervenor),

Respondents.

On Petition For Writ Of Certiorari To The District Court Of Appeal First District, State Of Florida

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. WHETHER THE TRIAL COURT'S SUA SPONTE REFORMATION OF AN 1889 DEED WITHOUT PLEADINGS, NOTICE, EVIDENCE OR A HEARING FOR THE BENEFIT OF A NON-EXISTENT CHURCH AND NON-PARTY, VIOLATED THE PETITIONERS' FOURTEENTH AMENDMENT RIGHTS TO DUE PROCESS GUARANTEED BY THE U.S. CONSTITUTION?

II. WHETHER THE TRIAL COURT'S REFORMATION OF AN 1889 DEED FOR THE BENEFIT OF A DISBANDED CHURCH, WHICH RESULTED IN THE CREATION OF A NEW CHURCH, AN APPOINTMENT AND SELECTION OF A NEW CHURCH TRUSTEE, BASED ON BAPTISM,VIOLATED THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT TO THE U.S. CONSTITUTION?

PARTIES TO THE PROCEEDING

The following parties were the Plaintiffs' below and are the Petitioners' before this Court:

W. J. Spradley, Jr., Edward Campbell and Virginia Campbell Cardin as representatives of the Campbell Reunion Memorial.

The following parties were the Defendants' below and are the Respondents' before this Court:

Old Harmony Baptist Church, Board of Trustees of the Old Harmony Baptist Church, William Bailey, James Emory Spradley, Wayne Heatherly, Rodney Watts, William E. Reams, as Personal Representative De Bonis Non-administratis of the Estate of Richard Sampson Porter (Intervenor).

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PETITION FOR WRIT OF CERTIORARI

The Petitioners, W.J. Spradley, Jr., Edward Campbell, Virginia Campbell Cardin, as representatives of The Campbell Reunion Memorial, respectfully pray that a Writ of Certiorari be issued to review the opinion of the Florida District Court of Appeal, First District, entered in this proceeding on August 13, 2001.

OPINIONS BELOW

The opinion of the Florida District Court of Appeal, First District, dated September 26, 2001 denying Petitioners' Motion for Rehearing is reprinted at App. 18a. The Order of the Florida District Court of Appeal, First District, affirming without opinion, the trial court's order was issued on August 13, 2001. This is an unpublished opinion and reprinted at App. 1a. The trial court's rulings are unreported. The trial court's Final Judgement is reported at App. 5a, and the Final Order is reported at App. 10a.

JURISDICTION

The Order of Affirmance by the Florida District Court of Appeal, First District, was entered on August 13, 2001. The Petitioners timely filed a Motion for Rehearing, Alternative Motion for Rehearing En Banc and Motion for Certification on August 28, 2001 with the Florida District Court of Appeal, First District. On September 26, 2001, the Florida District Court of Appeal, First District, denied

the Petitioners' Motion for Rehearing, Motion for Rehearing En Banc and Alternative Motion for Certification. This Order is reprinted at App. 18a.

Jurisdiction of this Court to review this case on Certiorari rests on 28 U.S.C. Section 1257(a). Because the Florida District Court of Appeal, First District, elected not to write an opinion, the Supreme Court of Florida was without jurisdiction to review this case and the Florida District Court of Appeal, First District, is the highest Florida court in which a decision could be rendered. Florida Constitution, Article V, Section 3B(3); *Jenkins v. State*, 385 So.2d 1356 (Fla. 1980); *Palmore v. Sidoti*, 466 U.S. 429 (1984); *Ibanez v. Florida Board of Accountancy*, 512 U.S. 136 (1994).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE CASE

A. INTRODUCTION.

The Petitioners' rights under the First and Fourteenth Amendments to the U.S. Constitution were violated when Judge R.A. Green reformed an 1889 deed without notice, pleadings, evidence, a hearing or trial, on behalf of Harmony Baptist Church, a non-existent entity. Judge R.A. Green granted all filed motions for summary judgment in a quiet title suit and sua sponte reformed an 1889 deed in

violation of Petitioners' due process rights and awarded two acres to a non-existent church which disbanded and abandoned the disputed property in 1945. The court's ruling, reforming the 1889 deed without notice, pleadings, evidence, or a hearing, resulted in an unconstitutional seizure of four acres from the Petitioner W.J. Spradley, Jr. The four acres seized by the court have been in Petitioner W.J. Spradley, Jr., family's possession since 1885. The Petitioners and Respondents did not file any pleadings in a quiet title suit requesting the court to reform an 1889 deed. Judge R.A. Green, by reforming the 1889 deed, without any pleadings, evidence or a hearing resurrected Harmony Baptist Church and created a new church.

Judge R.A. Green became excessively entangled in church dogma and policy, in violation of the Establishment Clause of the First Amendment, by representing the interests of a non-existent church and concluding without evidence, that the non-existent congregation would have a present day interest in owning the land. Judge R.A. Green proceeded without notice, a hearing or trial and determined without evidence that the newly created church needed a representative. The trial court ruled the new church representative would be a trustee.

Judge R.A. Green determined, without a hearing and evidence, the court appointed trustee had to be a baptized member of disbanded Harmony Baptist Church. Judge R.A. Green acted as an ecclesiastical court and invited the public to come forward in order to interview any witnesses who could provide histories for former baptized members of Harmony Baptist Church. After Judge R.A. Green interviewed numerous witnesses, he

then appointed William Bailey, as trustee, a former baptized member of Harmony Baptist Church, for the newly created church. Finally, the trial court sua sponte ordered a survey, set the boundaries and partitioned the two acres awarded to the newly created church.

The Petitioners exhausted all state court appeals and filed this Writ of Certiorari as the last resort to remedy the U.S. Constitution violations of due process and separation of church and state.

This case began as a result of the controversial ownership of the four acres in Madison County, Florida. In 1998, the Respondents sued the Petitioners in a quiet title suit for ownership of the four acres. The Petitioners countersued the Respondents, moved for summary judgment for quiet title and recited the below facts.

Harmony Baptist Church held services on the disputed land between 1841 and 1945 in Madison County, Florida. Courthouse records did not show land ownership in Harmony Baptist Church between 1841 and 1860.

In 1860, Joseph Tuten purchased a forty acre parcel containing the disputed land from the State of Florida. L1-L3. This forty acre conveyance between Joseph Tuten and the State of Florida did not contain a four acre reservation.

Joseph Tuten did not convey any land to Harmony Baptist Church. Joseph Tuten sold the disputed land on an unknown date to R.S. Porter.[1]

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[1] The courthouse records proved a deed was never executed between Joseph Tuten and R.S. Porter for the disputed

During 1885, R.S. Porter and J.B. Spradley signed a bond and R.S. Porter agreed to sell J.B. Spradley 160 acres which included the disputed land.[2] L8. The bond made a reference to land occupied by Harmony Baptist Church. L8. R.S. Porter did not convey any land to Harmony Baptist Church. L1-L6. The 1885 bond was never recorded.

In 1889, R.S. Porter deeded to J.B. Spradley the above 160 acres containing the disputed land. L4-L6. The deed contained a four acre reservation in one of the forty acre parcels and did not describe the location of the four acre parcel. L4-L6. The 1889 deed was silent on the beneficiary and purpose of the four acre reservation.

In 1891, J.B. Spradley died and his wife, Ida Spradley, inherited 160 acres. The 1889 deed for 160 acres was recorded in 1906.[3]

Since 1891, Ida Spradley was in continuous possession of the disputed land and paid taxes on 160 acres between 1899 and 1949. App. 48a, 49a, 52a; L10.

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land. The Lodging Exhibit, L1-L6, contains the title search completed by Petitioners.

[2] J.B. Spradley was Petitioner W.J. Spradley, Jr.'s grandfather. R.S. Porter was the uncle of the grandmother of Petitioner W.J. Spradley, Jr.

[3] In 1901, R.S. Porter conveyed one of the disputed four acres to Madison County for a school. The school was in existence between 1913-1918. During 1970, this one acre was condemned for a highway. The State of Florida paid damages to W.J. Spradley, Sr.'s estate for this one acre. App. 59a-62a, 74a.

In 1918, Ida Spradley conveyed 160 acres to her son W.J. Spradley, Sr., who reconveyed a life estate to Ida Spradley.

Between 1932 and 1960, W.J. Spradley, Sr., cultivated the disputed four acres by grazing livestock, cutting trees, and extracting turpentine.

The Harmony Baptist Church congregation voted to disband and abandoned the wooden church during 1945. Between 1945 and 1960, W.J. Spradley, Sr., used the abandoned building for storage and was the caretaker of the Campbell Cemetery. W.J. Spradley, Sr., paid taxes on the disputed four acres between 1950 and 1952. App. 53a.

In 1952, W.J. Spradley, Sr., conveyed to Petitioner W.J. Spradley, Jr., his son, 160 acres. W.J. Spradley, Sr., continued in possession of his 160 acre farm until his death in 1960.

Between 1960 and1998, Petitioner, W.J. Spradley, Jr., possessed the disputed four acres without interruption or challenge. Petitioner, W.J. Spradley, Jr., continuously maintained the Campbell Cemetery, planted, harvested, and re-planted pine trees on the disputed four acres.

Petitioner, W.J. Spradley, Jr., provided consent to Petitioner, Campbell Reunion, which is a group of individuals with lineal descendants buried in the Campbell Cemetery, to build a memorial at the former Harmony Baptist Church site.[4] During 1980, the Petitioner Campbell Reunion constructed a building as a memorial in

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[4] The Campbell Cemetery occupies one of the two acres awarded to Harmony Baptist Church. The Campbell Cemetery contains Campbell and Spradley lineal decendents dating to 1866. App. 66a.

honor of their lineal descendants buried at the Campbell Cemetery.

Between 1980 and 1998, the Campbell Reunion building and Campbell Cemetery were maintained by Petitioners Campbell Reunion and W.J. Spradley, Jr.

In 1996, Respondent Old Harmony Baptist Church obtained Petitioner W.J. Spradley, Jr.'s permission to begin using the Campbell Reunion building for church services.[5] Respondent Old Harmony Baptist Church did not have any association with disbanded Harmony Baptist Church.

In 1998, Petitioner W.J. Spradley, Jr., revoked his permission allowing Respondent Old Harmony Baptist Church to use the Campbell Reunion building for church services.

In 1998, Petitioners W.J. Spradley, Jr., and Virginia Campbell Cardin filed a complaint for injunctive relief against Respondent Old Harmony Baptist Church.

B. PROCEDURAL HISTORY OF THE CASE.

In 1998, a hearing was held on Petitioners' complaint for injunctive relief and Judge John Peach entered an injunction sua sponte on behalf of Respondent Old Harmony Baptist Church against Petitioners W.J. Spradley,

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[5] Church services were not held at the former Harmony Baptist Church site between 1946 and 1996.

Jr., and the Campbell Reunion.[6] This Order was quashed by the Florida District Court of Appeal, First District.

In 1998, the Respondent Old Harmony Baptist Church filed a counterclaim responding to Petitioners' complaint for injunctive relief and sued Petitioners for quiet title for the disputed four acres. Petitioners W.J. Spradley, Jr., and Campbell Reunion countersued the Respondents for quiet title. Petitioners and Respondents did not plead and request reformation of the 1889 deed.

In 1998, William Reams, the personal representative of R.S. Porter's estate, filed a motion for leave to intervene to file a quiet title suit for the disputed four acres. Respondent William Reams did not plead and request the trial court to reform the 1889 deed.[7]

The Petitioners requested the court to dismiss the Respondent Old Harmony Baptist Church's claim for quiet title because the pleading omitted a deraignment of title mandated by Section 65.061(3), Florida Statutes (1999). Judge R.A. Green denied Petitioners' motion to dismiss.

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[6] Circuit Court Judge John Peach was recused by the Petitioners after the injunction was quashed by the appeals court. Retired Judge R.A. Green was appointed to this case after numerous Florida Third Judicial Circuit Judges refused to accept this case. App. 75a.

[7] R.S. Porter died in 1904 and his estate was probated between 1904 and 1944. William Reams, a lineal descendent of R.S. Porter, was appointed the de bonis administrator of R.S. Porter's estate in 1998. William Reams contended the disputed four acres were recently discovered and should have been probated before 1944.

The Respondent Old Harmony Baptist Church filed a motion for summary judgment against the Petitioners, conceded Old Harmony Baptist Church lacked standing in the quiet title suit, and argued R.S. Porter owned the disputed four acres.

The Petitioners served their motions for summary judgment against the Respondents Old Harmony Baptist Church and William Reams.

Judge R.A. Green heard oral arguments for the motions for summary judgment on the sole issue of quiet title. Mr. Zant, the attorney representing the Respondents, stipulated that W.J. Spradley, Jr., proved adverse possession before 1939 for one of the disputed four acres.

On December 20, 1999, Judge R.A. Green granted all motions for summary judgment. Judge R.A. Green sua sponte reformed the 1889 deed without notice, evidence or a hearing and any party pleading reformation. Judge R.A. Green placed title in Harmony Baptist Church, circa 1841, for two acres, one acre in R.S. Porter, and one acre in Madison County, Florida.[8]

On December 20, 1999, a hearing was convened by Judge R.A. Green's instruction for the primary purpose of determining the Harmony Baptist Church trustees in existence before 1945. Judge R.A. Green invited the general public to come forward and provide historical baptism information for the former Harmony Baptist Church

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[8] The Madison County Board of Commissioners, Madison County, Florida was not a party in this litigation and did not make a claim to the disputed four acres.

members. On December 20, 1999, the Petitioners made a motion for rehearing. The Petitioners argued Judge R.A. Green erred by sua sponte reforming the 1889 deed without any notice, pleadings, evidence, or a trial. Judge R.A. Green erred by rejecting opposing counsel's stipulation that Petitioner W.J. Spradley, Jr., proved adverse possession for one of the disputed four acres. Judge R.A. Green responded the Petitioners should have a trial to resolve the issue of adverse possession, and then denied the Petitioners' motion for rehearing. App. 46a.

During the December 20, 1999 hearing, Judge R.A. Green was advised that the disbanded Harmony Baptist Church did not have active members. Nevertheless, Judge R.A. Green used his investigative powers to identify individuals who were baptized at Harmony Baptist Church to serve as trustees. The attorneys objected that the court's inquiry was violating the constitutional principle of separation of church and state. Judge R.A. Green completed his inquiry despite Petitioners' objections.

The Petitioners argued a motion for clarification. Judge R.A. Green explained his rationale for denying the Petitioner W.J. Spradley, Jr.'s claim for adverse possession by stating abandoned church property could not be adversely possessed.

During July 2000, the parties appeared for an evidentiary hearing convened by the court's instruction to determine a location of the two acres titled by the court in Harmony Baptist Church. Judge R.A. Green called Walton Poppell, a surveyor, as the court's only witness to find a location for the two acres titled by the court in Harmony Baptist Church. The trial court accepted the survey, set

the boundaries and partitioned the two acres titled in Harmony Baptist Church. Judge R.A. Green did not partition the two remaining acres awarded to R.S. Porter and Madison County, Florida.

The court signed a Final Order on July 14, 2000 and Final Judgement on July 22, 2000.[9] App. 10a, 5a.

Since July 22, 2000, the court appointed trustee William Bailey has assumed control of the Campbell Cemetery and allowed Respondent Old Harmony Baptist Church to begin permanent construction of a church on the disputed two acres.

C. APPELLATE HISTORY OF THE CASE.

On August 13, 2001, the Florida District Court of Appeal, First District, PER CURIAM AFFIRMED the trial court's order without a written opinion. App. 1a. The Petitioners timely filed a Motion for Rehearing, Motion for Rehearing En Banc, and Motion for Certification on August 28, 2001 with the Florida District Court of Appeal, First District. App. 24a. The Florida District Court of Appeal, First District, denied the Petitioners' Motion for Rehearing without a written opinion on September 26, 2001. App. 18a. The Florida District Court of

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[9] The Petitioners filed a motion to stay. The court was informed the court ordered boundaries of the two acres titled in Harmony Baptist Church divided the Campbell Cemetery. The trial court denied Petitioners' motion to stay.

Appeal, First District, issued its Mandate on October 12, 2001. App. 3a.

HOW THE FEDERAL QUESTIONS WERE RAISED AND PASSED ON

On December 20, 1999, Judge R.A. Green sua sponte reformed the 1889 deed without notice, pleadings, evidence, a trial, or hearing. The Respondents sued and the Petitioners countersued on one claim for quiet title for the disputed four acres under Section 65.061(3), Florida Statutes (1999). The Petitioners and Respondents did not file any pleadings under the Florida Rules of Civil Procedure, Rule 1.120(b) (1999), requesting reformation of a deed. Judge R.A. Green did not convene a hearing to receive evidence that an 1889 deed should be reformed because a mistake or fraud was present during the deed execution in 1889. The Petitioners timely objected and argued a motion for rehearing on December 20, 1999. The Petitioners informed the court its reformation of an 1889 deed without a trial was in violation of Petitioners' due process rights. Judge R.A. Green denied the Petitioners' motion for rehearing.

Judge R.A. Green convened the December 20, 1999 hearing to determine the trustees in existence of a non-existent church. Judge R.A. Green was cautioned by all parties his investigation to determine the identity of non-existent trustees of a non-existent church was in violation of the U.S. Constitution prohibition of merging church and state.

The Petitioners appealed and raised eight grounds to reverse the trial court's Judgement in their brief to the Florida District Court of Appeal, First District. App. 19a. The Petitioners' brief argued Judge R.A. Green violated Petitioners' due process rights by reforming an 1889 deed without a trial. The Petitioners also argued their First and Fourteenth Amendments rights to the U.S. Constitution were violated when Judge R.A. Green awarded land to a newly created church, by determining the internal organization of a church, and by using a baptism standard to appoint the trustee. The Florida District Court of Appeal, First District, PER CURIAM AFFIRMED without a written opinion. The Petitioners timely filed a Motion for Rehearing, Motion for Rehearing En Banc, and Motion for Certification raising the same constitutional issues which were denied by the Florida District Court of Appeal, First District, without a written opinion.

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISIONS WHICH PROHIBIT THE BLANKET SUPPRESSION OF DUE PROCESS BEFORE DEPRIVING INDIVIDUALS OF VESTED PROPERTY RIGHTS.

The decision below is a blanket ban on procedural due process. The Respondents sued and the Petitioners countersued for quiet title only. The Petitioners and Respondents did not file any pleadings requesting reformation of an 1889 deed. Judge R.A. Green granted all motions for summary judgment which eliminated any

remaining issues for the court to decide.[10] After granting the motions for summary judgment, Judge R.A. Green lacked subject matter jurisdiction to reform an 1889 deed. Judge R.A. Green sua sponte reformed an 1889 deed, which was recorded in 1906, without notice, an evidentiary hearing or trial. Judge R. A. Green's reformation of an 1889 deed, without notice and an evidentiary hearing, denied the Petitioners access to the courts and procedural due process. Judge R.A. Green's denial of Petitioners' due process rights resulted in the immediate and permanent deprivation of their vested real property interests. The chilling effect of Judge R.A. Green's decision was to deny Petitioners and all similarly situated litigants procedural due process, by the deprivation of a vested property right without a trial, when the court was motivated by personal religious beliefs.

A. Importance Of Due Process.

The first issue for this Court to decide is whether Petitioners' due process rights under the First and Fourteenth Amendments to the U.S. Constitution were violated when Judge R.A. Green sua sponte reformed an 1889 deed without notice, pleadings, evidence, a hearing or trial on behalf of Harmony Baptist Church, which was a non-existent entity. The sole issue the trial court had to

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[10] Respondent Harmony Baptist Church argued title of the disputed four acres was in R.S. Porter. Respondent Harmony Baptist Church failed to prove its entitlement to a judgment as a matter of law as required under the Florida Rules of Civil Procedure, Rule 1.510(c). *Harvey Building, Incorporated v. Haley*, 175 So.2d. 780 (Fla. 1965).

decide was which party had the superior claim of title for the disputed land. The Petitioners and Respondents did not file pleadings requesting reformation of an 1889 deed. The Florida courts have consistently held a suit for quiet title does not include a claim for reformation.[11]

The Petitioners did not have any notice the trial court intended to sua sponte reform an 1889 deed without a hearing or trial for the benefit of a non-existent party. The trial court lacked subject matter jurisdiction to reform an 1889 deed when pleadings were not filed by any party requesting reformation and the original parties who signed the 1889 deed were not present before the court.

The trial court failed to provide the Petitioners with an opportunity to be heard before sua sponte reforming an 1889 deed and seizing four acres from Petitioner W.J. Spradley, Jr. Procedural due process is the procedure the Government must follow before it deprives a person of life, liberty, or property. "Parties whose rights are affected are entitled to be heard; and in order that they enjoy that right, must first be notified." *Windsor v. McVeigh*, 93 U.S. 274 (1876); *Hovey v. Elliott*, 167 U.S. 409 (1897); *Grannis v. Ordean*, 234 U.S. 385 (1914). This Court held that due process tolerates variances in the form of a hearing "appropriate to the nature of the case," *Mullane v. Cent. Hanover Tr., Co.*, 339 U.S. 306, 313 (1950), and "depending upon the importance of the interests involved and the nature of the subsequent proceedings, if any." *Boddie v.*

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[11] The Florida courts require parties seeking reformation of a deed to plead with particularity the elements of reformation. *Connelly v. Smith*, 97 So.2d 865 (Fla. 3d DCA 1957); Florida Rules of Civil Procedure, Rule 1.120(b) (1999).

Connecticut, 401 U.S. 371, 378 (1971). This Court has traditionally insisted that, whatever its form, an opportunity for a hearing, must be provided before the deprivation at issue occurs. *Bell v. Burson*, 402 U.S. 535, 542 (1971); *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971); *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Mullane v. Cent. Hanover, Tr. Co.*, 339 U.S. at 313; *Opp. Cotton Mills v. Adm'r.*, 312 U.S. 126, 152-53 (1941); *United States v. Illinois Cent. R. Co.*, 291 U.S. 457, 463 (1934); *Londoner v. City & County of Denver*, 210 U.S. 373, 385-86 (1908). See *In re Ruffalo*, 390 U.S. 544, 550-51 (1968).

This Court's approach in determining the question, if the State action meets the procedural due process clause under the First and Fourteenth Amendments, is set forth in *Goldberg v. Kelly*, 397 U.S. 254 (1970) and *Mathews v. Eldridge*, 424 U.S. 319 (1976). It is only after a finding of a deprivation of a "protected property interest," does the Court then examine whether the below State procedures comported with due process. *Mathews v. Eldridge*, supra.

The dictates of due process require the balancing of three distinct factors. The first due process factor requires an analysis of the private interest affected by the State action. The second due process factor to be scrutinized by the Court is the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Goldberg v. Kelly*, supra, 397 U.S. at 263-71.

The first dictate of due process requires an examination of the Petitioners' protected property interests affected by the State action. Since 1885, Petitioner W.J. Spradley, Jr., as his lineal descendants, possessed, without interference the disputed four acres. The Petitioners W.J. Spradley, Jr., and Campbell Reunion members have buried their lineal descendants in the private family cemetery since 1866. The Petitioners have vested property rights of a paramount importance which require the fullest procedural due process protections conceivable under the First and Fourteenth Amendments to the U.S. Constitution. The increased importance of the vested property interest will result in the Court requiring more procedural safeguards. An individual's right to own, enjoy, and possess real property without State infringement, interference, or deprivation is of paramount importance.

An individual has a right to enjoy what he owns free of Government interference. *Lynch v. Household Fin. Corp.*, 405 U.S. 538, 552 (1972). There are "extraordinary situations" that permit the Government to seize property and postpone notice and the opportunity for a hearing. *Boddie v. Connecticut*, 401 U.S. at 379. These situations are extremely unusual. This Court has allowed a prehearing seizure in very limited situations. First, in each case, the prehearing seizure has been directly necessary to secure an important Government or general public interest. Second, there was a special need for very prompt action and dispensing with due process. Third, the State kept strict control over the monopoly of legitimate force. The Government official responsible for the seizure determined the property deprivation was justified and necessary. This

Court has allowed summary seizure of property and dispensed with due process to collect internal revenue for the United States, meet a national war effort, protect a banking failure disaster, and to protect the general public from contaminated food products. None of the above exceptions were present when the trial court dispensed with due process and seized Petitioners' property without notice, pleadings, evidence, a hearing or trial.

The second dictate of due process to be examined by this Court is the risk of an erroneous deprivation of such interest through the procedure used, and the probable value, if any, of additional procedural safeguards. This Court has held there was an unacceptable risk of an erroneous deprivation of property when the State allowed a prejudgment attachment of real property during an ex parte proceeding without preattachment notice and a hearing. *Connecticut & Digiovanni v. Doehr,* 501 U.S. 1 (1991). In *Connecticut & Digiovanni v. Doehr,* supra, there were not any "exigent circumstances" present permitting the postponement of notice and a hearing by the State until after the attachment was completed. The risk of an erroneous deprivation was too great during the ex parte prejudgment attachment hearing. The Connecticut prejudgment attachment statute was held unconstitutional by this Court under the *Mathews v. Eldridge* test.

The risk of an erroneous deprivation was too great when the trial court sua sponte reformed an 1889 deed that was illegible, without any notice and pleadings requesting reformation, evidence supporting reformation, and the parties being present before the court. If notice and an opportunity to be heard were provided by the trial court, the Petitioners would have requested the court

to examine documents, receive testimony and argue the 1889 deed was not executed under a mistake or fraud. The Petitioners had a right to present testimony and argue the affirmative defenses of laches and the statute of limitations to preclude the reformation of the 1889 deed.[12] The Florida courts have comported with due process and consistently held the moving party in a reformation suit has the burden of proof to introduce evidence at a hearing to "a clear and convincing standard" that a deed was executed under a mistake or fraud before the court can reform a deed.[13]

There were not any "exigent circumstances" present to justify Judge R.A. Green dispensing with due process when he reformed an 1889 deed. Due process required notice, an evidentiary hearing, or trial before the court reformed the 1889 deed.

Finally, the trial court would not have undergone any additional fiscal, or administrative burdens by granting the Petitioners' notice, an evidentiary hearing, or trial before making a ruling the 1889 deed should have been reformed.

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[12] Judge R.A. Green's reformation of the 1889 deed was reversible error. Florida has a twenty year statute of limitations which bars a party's suit to reform a deed after it has been recorded in excess of twenty years. 1925 Fla. Laws, Chapter 10171; Section 95.231(3), Florida Statutes (1999); and *Norton v. Jones*, 83 Fla. 81, 90 So. 854 (Fla. 1922). App. 39a-45a.

[13] *Ayers v. Thompson*, 536 So.2d 1151 (Fla. 1st DCA 1988); *Sierra v. Albers*, 540 So.2d 907 (Fla. 2d DCA 1989); *Mueller v. Marks*, 576 So.2d 1337 (Fla. 4th DCA 1991).

In conclusion, the Petitioners were denied their due process rights when the trial court sua sponte reformed the 1889 deed without notice, a hearing, or trial in violation of the First and Fourteenth Amendments to the U.S. Constitution. *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Mathews v. Eldridge*, 424 U.S. 319 (1976).

II. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISIONS WHICH PROHIBIT THE STATE SPONSORSHIP OF RELIGION WHICH IS IN DIRECT VIOLATION OF THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT.

The decision below constituted State sponsorship of religion when the trial court seized and awarded Petitioners' land to a new church, appointed a church trustee, and determined the new church trustee's qualifications. Judge R.A. Green reached this result by refusing to apply the Florida Rules of Civil Procedure and real property laws which proved Petitioner W.J. Spradley, Jr.'s title to the disputed four acres. Judge R.A. Green violated the Petitioners' First Amendment rights by creating a new church which resulted in the permanent deprivation of their vested real property interests. The chilling effect of Judge R.A. Green's decision, was to deny Petitioners and all similarly situated litigants their First Amendment rights, when the court's rulings were influenced by personal religious beliefs.

A. Importance of the Establishment Clause of the First Amendment.

The second issue presented is whether Petitioners' First Amendment rights were violated, when Judge R.A. Green relied upon his religious beliefs while determining the ownership of the disputed four acres in a quiet title suit. Judge R.A. Green determined a newly created church had title to two of the four disputed acres. Judge R.A. Green reached this conclusion even though there was not any legal documentation proving Harmony Baptist Church owned the land in question. Assuming there was proof of ownership, Harmony Baptist Church forfeited its legal rights to the disputed land in 1945, when the congregation disbanded and abandoned the disputed property.

Judge R.A. Green sua sponte convened a hearing and used its investigative powers to determine the former members of Harmony Baptist Church. Judge R.A. Green invited individuals to testify and asked background questions about individual baptism histories at Harmony Baptist Church. Only one witness, William Bailey, testified he was baptized at Harmony Baptist Church. Judge R.A. Green then appointed William Bailey as the trustee for the newly created church. Judge R.A. Green did not provide any instructions to trustee, William Bailey.

Judge R.A. Green was influenced by his personal religious beliefs by refusing to apply the Florida Rules of Civil Procedure and real property laws which proved the Petitioners' claims to the disputed property. There were several examples in the record which established Judge R.A. Green's religious motivation influenced his orders

rendered during the trial proceedings. Judge R.A. Green did not require Respondent Old Harmony Baptist Church to comply with the pleading requirements under Section 65.061(3), Florida Statutes (1999). The court allowed Harmony Baptist Church to file and argue a motion for summary judgment when it lacked standing to participate in the quiet title suit. The Petitioner W.J. Spradley, Jr., proved his adverse possession claims. Opposing counsel stipulated Petitioner W.J. Spradley, Jr., proved his adverse possession claim to one of the disputed acres under the controlling adverse possession laws before 1939. Judge R.A. Green refused to apply the controlling adverse possession statutes and case law in existence before 1939, and rejected opposing counsel's stipulation that W.J. Spradley, Jr., proved his adverse possession claim.[14] Judge R.A. Green expressed his personal belief that abandoned church property could not be adversely possessed which was not supported by any legal authority. Judge R.A. Green was only interested in partitioning the land awarded to the newly created church. During a sanctions hearing, the trial court became concerned about a party's expression of hostility and inquired, if the court had the authority to order the parties to attend a Billy Graham Crusade. App. 76a. Finally, Judge R.A. Green's decision to reform the 1889 deed, ninety-three years after it was recorded, was reversible error as a matter of law.

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[14] See *Coogler v. Rogers*, 25 Fla. 853, 7 So. 391 (Fla. 1889); *Okeechobee Co. Highsmith v. Norton*, 145 Fla. 417, 199 So. 319 (Fla. 1940); *Wilson v. Tanner*, 346 So.2d 1077 (Fla. 1st DCA 1977); *Kendrick v. Latham*, 25 Fla. 819, 6 So. 871 (Fla. 1889); Sections 2935, 2936 Volume 2 Revised General Statutes of Florida (1920).

The Establishment Clause of the First Amendment, made applicable to the states through the Fourteenth Amendment, commands that a "State shall make no law respecting an establishment of religion." In determining whether the Government has violated the Establishment Clause, the Court has applied a three-prong test developed in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Under *Lemon*, the State action that fails any part of the following three-prong test is unconstitutional. First, the State action must have a secular purpose. Second, the primary effect of the State action must be one that neither advances nor inhibits religion. Finally, the State action must not foster an excessive entanglement with religion. *Lemon v. Kurtzman*, 403 U.S. at 612-13.

The first prong of the *Lemon* test addresses whether the challenged State action has a secular purpose. In applying the purpose test, it is appropriate to ask whether the Government's actual purpose is to endorse or disapprove of religion. *Wallace v. Jaffree*, 472 U.S. 38, 56 (1985). The Court has invalidated Governmental action on the ground that a secular purpose was lacking, but only when it has concluded that there was no question that the activity was motivated wholly by religious considerations. *Lynch v. Donnelly*, 465 U.S. 668, 680 (1984). When the trial court concluded an individual could act as a trustee, only if he was baptized, this ruling did not constitute a secular purpose. This ruling conveyed a message that religion was favored or preferred. The Government cannot favor religion over non-religion. *County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573 (1989). The Government is precluded from conveying or attempting to convey a

message that religion or a particular religious belief is favored or preferred. *Jaffree*, 472 U.S. at 70.

The second prong of the *Lemon* test is whether the primary effect of the State action is to advance or inhibit religion. "The effect prong asks whether, irrespective of the Government's actual purpose, the action under review in fact conveys a message of endorsement or disapproval of religion." *Jaffree*, 472 U.S. at 56; *Lynch*, 465 U.S. at 690. Judge R.A. Green relied upon his religious views to determine the trustee's qualifications. This ruling was not consistent with the established principle that the Government must pursue a course of complete neutrality toward religion. *Jaffree*, 472 U.S. at 60. The trial court advanced religion by awarding two acres to a newly created church, by appointing a trustee, and determining the qualifications of a trustee. Finally, the court appointed trustee, under the court's supervision, has permitted permanent construction of a church building on the disputed land.

The third prong of the *Lemon* test is that the State action must not foster an excessive government entanglement with religion. When Judge R.A. Green's rulings were influenced by his religious beliefs, this practice created an excessive entanglement between State and religion. The judicial branch is composed of judges who are sworn to be neutral arbiters and must apply the law evenhandedly and free of bias. When the trial court relied on his religious beliefs in making rulings, this practice eliminated its neutrality. Judge R.A. Green placed two acres in trust without instructions. The trial court created a trust which has required the newly created church to be

monitored and supervised by the court. Judge R.A. Green's supervision of a newly created church was impermissible under *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Judge R.A. Green's creation and supervision of a newly created church violated the third prong of *Lemon*, by becoming excessively entangled with religion.

The above rulings violated the three tests set forth in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), which resulted in the State sponsorship of religion, and violated the Establishment Clause of the First Amendment to the United States Constitution.

IMPORTANCE OF QUESTIONS PRESENTED

This case presents recurring questions of significance throughout the United States regarding the issues of due process and the Establishment Clause of the First and Fourteenth Amendments when the State action was influenced by religion. This case has received publicity in Florida, Georgia, and Alabama in the last several years which supports the conclusion the general public has recognized the significant issues presented in this case.[15]

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[15] This case has received extensive media coverage by television and newspapers throughout the State of Florida from the following sources: WCTV, Channel 6, Tallahassee, Florida; WBXT, Channel 27, Tallahassee, Florida; TV 69 W 69 AX, Perry, Florida, Tallahassee Democrat, Tallahassee, Florida, Florida Times Union, Jacksonville, Florida; Tampa Tribune, Tampa, Florida; Miami Herald, Miami, Florida; Palm Beach Post, West Palm Beach, Florida; Madison County Carrier and Enterprise Recorder, Madison, Florida; Taco Times and Perry Herald,

Judge R.A. Green's ruling, by reforming the 1889 deed without notice, a hearing, or trial, and the court appointment of a trustee of a newly created church, resulted in an impermissible entanglement between church and state which is prohibited by the Establishment Clause of the First Amendment to the U.S. Constitution. Judge R.A. Green established a new church because his religious values were interjected in a quiet title suit while determining the owner of the disputed four acres.

Judge R.A. Green relied upon his religious beliefs in the decision-making process and the Petitioners were denied their constitutional rights of due process and freedom from Government sponsorship of religion. The Petitioners were not provided with the appropriate notice and opportunity to be heard before the court seized the disputed four acres. The Petitioners had a right to notice, an opportunity to be heard, and a trial before an unbiased court in which religion was not an influencing factor. Judge R.A. Green without due process seized the Petitioners' vested real property interests, and awarded Petitioners' land to a non-existent church and, in effect, established a new church led by a trustee appointed by the court. In so doing, Judge R.A. Green blatantly violated the U.S. Constitution and acted as an ecclesiastical court rather than a civil court. The Petitioners were irreparably harmed by Judge R.A. Green's ruling when they had owned the property in dispute for 114 years. The Petitioners' family members are buried in a private cemetery located on the disputed property that was awarded

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Perry, Florida; North Florida Advocate, White Springs, Florida and Monticello News, Monticello, Florida.

to the new church established by the court. A State court should never be allowed to blatantly violate the U.S. Constitution in order to fulfill its religious goal of establishing a new church and advancing religion.

If Judge R.A. Green's ruling is allowed to stand, then the courts in different states throughout the country would be permitted to circumvent the U.S. Constitution, and discriminate against and deny party litigants due process when the case involved religious issues. The Constitution of the United States must be enforced by this Court in every case when there was a clear violation of the First and Fourteenth Amendments by state courts.

The trial court's denial of the Petitioners' due process rights and freedom from government entanglement with religion resulted in the permanent deprivation of Petitioners' vested real property rights, conflicts with the First and Fourteenth Amendments and all interpretative decisions of this Court.

CONCLUSION

This Petition for Writ of Certiorari should be granted based on the compelling arguments asserted by Petitioners.

Respectfully submitted,

STEPHEN BULLOCK, ESQUIRE
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(386) 755-4524 (Facsimile)
Counsel of Record for Petitioners

No. _____

In The

Supreme Court of the United States

W.J. SPRADLEY, JR., EDWARD CAMPBELL and VIRGINIA CAMPBELL CARDIN as Representatives of the CAMPBELL REUNION MEMORIAL,

Petitioners,

vs.

OLD HARMONY BAPTIST CHURCH, BOARD OF TRUSTEES OF THE OLD HARMONY BAPTIST CHURCH, WILLIAM BAILEY, JAMES EMORY SPRADLEY, WAYNE HEATHERLY, RODNEY WATTS, WILLIAM E. REAMS as Personal Representative De Bonis Nonadministratis of the Estate of RICHARD SAMPSON PORTER (Intervenor),

Respondents.

On Petition For Writ Of Certiorari To The District Court Of Appeal First District, State Of Florida

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D00-3169

W.J. SPRADLEY, JR., EDWARD CAMPBELL and VIRGINIA CAMPBELL CARDIN as Representatives of the SPRADLEY-CAMPBELL REUNION MEMORIAL,

Appellants,

v.

OLD HARMONY BAPTIST CHURCH, BOARD OF TRUSTEES OF THE OLD HARMONY BAPTIST CHURCH, WILLIAM BAILEY, JAMES EMORY SPRADLEY, WAYNE HEATHERLY and RODNEY WATTS,

Appellees,

v.

WILLIAM E. REAMS, as PERSONAL REPRESENTATIVE DE BONIS NON ADMINISTRATIS OF THE ESTATE OF RICHARD SAMPSON PORTER, Deceased,

Intervenor.

_____/

Opinion filed August 13, 2001.

An appeal from the Circuit Court for Madison County.

R. A. Green, Jr., Senior Judge.

William J. Spradley, III, of O'Hara, Spradley & Waters, P.A.; and Brannon, Brown, Haley, Robinson & Bullock, P.A., Lake City, for Appellants.

David W. Collins, Monticello; and J.R. Zant, Madison, for Appellees/Intervenor.

PER CURIAM.

AFFIRMED.

ERVIN, DAVIS and VAN NORTWICK, JJ., CONCUR.

MANDATE

From

DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

To the Honorable Judges of the Circuit Court for Madison County

WHEREAS, in that certain cause filed in this Court styled:

W.J. SPRADLEY, JR., EDWARD CAMPBELL, ET AL.

v.

OLD HARMONY BAPTIST CHURCH, ET AL.

Case No: 1D00-3169

Lower Tribunal Case No: 98-010-CA, 98-101-CA

The attached opinion was issued on August 13, 2001.

YOU ARE HEREBY COMMANDED that further proceedings, if required, be had in accordance with said opinion, the rules of Court, and the laws of the State of Florida.

WITNESS the Honorable MICHAEL E. ALLEN, Chief Judge

of the District Court of Appeal of Florida, First District,

and the Seal of said Court done at Tallahasee, Florida,

on this 12th day of October 2001.

[SEAL]

/s/ Jon S. Wheeler
JON S. WHEELER, Clerk
District Court of Appeal of
Florida, First District

IN THE CIRCUIT COURT
OF THE THIRD JUDICIAL
CIRCUIT, IN AND FOR
MADISON COUNTY,
FLORIDA

W.J. SPRADLEY, JR. and
VIRGINIA CAMPBELL
CARDIN as representative
of the CAMPBELL
REUNION MEMORIAL,
Plaintiffs,

v.

OLD HARMONY
BAPTIST CHURCH,
BOARD OF TRUSTEES
OF THE OLD HARMONY
BAPTIST CHURCH,
WILLIAM BAILEY, JAMES
EMORY SPRADLEY,
WAYNE HEATHERLY and
RODNEY WATTS,
Defendants,

v.

WILLIAM E. REAMS, as
Personal Representative
De Bonis non
Administratis of the
Estate of Richard
Sampson Porter, Deceased,
Intervenor.
_____/

CASE NUMBER
98-010-CA

FINAL JUDGEMENT

Partial Summary Judgement was entered in this cause on December 20, 1999. The terms thereof are specifically incorporated herein.

The cause came on for final hearing on July 14, 2000 before the Court.

No evidence was adduced as to the identity of the heirs of Richard Sampson Porter as they existed at the time of his death. Accordingly, this Court makes no finding on that point, nor as to the location of the one-acre parcel reserved to Richard Sampson Porter.

The evidence showed that there are two remaining known living MEMBERS of the congregation of the (old) Harmony Baptist Church as it existed in 1947. (Persons serving as trustees, deacons or pastor of the church at that time could not be located and are presumed deceased.) Both were invited to accept the trusteeship of the church property, but only William Bailey, of Route 1, Box 8B, Lamont, FL 32336, filed an acceptance of trusteeship. Therefore, this Court has heretofore in reported hearings appointed him to serve as the sole trustee of said property.

In order to put an end to the controversy that precipitated this action, the Court determined that a boundary survey should be made and a formal description of the "Church Property" be made of record. Accordingly, the parties agreed upon a surveyor to perform that task and the Court heard the testimony of Walton Poppell, a competent registered land surveyor on that point.

It should be noted that the Plaintiff Spradley did not agree that the report be considered the correct description, or that a description was ascertainable, or that the parcel was indeed owned by the Church. The agreement was only that the selected surveyor was competent and acceptable to the Plaintiffs and Defendants.

Based upon the testimony and the other evidence in the cause, the Court is convinced the report of Walton Poppell is worthy of belief and should be confirmed as the description of the parcel belonging to the church. It is noted that the boundary description takes into account the road that was in existence and reflected in official maps of the time of the Porter/Spradley conveyance (which conveyance also recognized the prior ownership of the "church parcel" by the Harmony Baptist Church).

The Court observes that a cemetery of some age is on part of the church property. Florida law assures to the families of persons interred there, and to their descendants, the right of access for maintenance and visitation purposes.

THE COURT FINDS AND ADJUDGES:

1. Those spoken orders made in open court and which were reported by the Court Reporter then present, most of which have been previously excerpted and transcribed for the parties, are ratified and confirmed hereby;

2. The findings and rulings made in the Order Granting Motion for Summary Judgement in Part and Denying in Part are incorporated herein, hereby;

3. The legal description of the parcel owned by (old) Harmony Baptist Church is:

> A two acre parcel of land lying in the northwest quarter of the northeast quarter of section 28, Township 1 South; Range 6 East, Madison County, Florida and being more particularly described as follows: commence at the northwest corner of the northwest quarter of the northeast quarter of said section 28 and run south 01 degrees 59 minutes 50 seconds west along the west line of said northwest quarter of the northeast quarter 720.94 feet to the point of beginning, from said point of beginning run South 90 degrees 00 minutes 00 seconds East 321.06 feet, thence south 00 degrees 00 minutes 00 seconds east 291.03 feet to the center of the Old St. Augustine Road, thence north 81 degrees 15 minutes 53 seconds west along said road 364.41 feet, thence south 84 degrees 51 minutes 10 seconds west along said road 59.57 feet to the west line of the northwest quarter of the northeast quarter of said section 28, thence leaving said road, run north 01 degrees 59 minutes 50 seconds east along said west line of northwest quarter of northeast quarter 254.95 feet to the point of beginning, containing 2.00 acres, more or less.

4. The Court reserves jurisdiction to rule on motions now pending and to assess costs and fees, including attorney's fees.

Entered in Starke, Bradford County, Florida this 27 day of July, 2000.

R.A. Green, Jr.
R.A. GREEN, JR.
Senior Circuit Judge

c: Stephen Bullock, Esquire
J.R. Zant, Esquire
David Collins, Esquire

IN THE CIRCUIT COURT, THIRD JUDICIAL CIRCUIT, IN AND FOR MADISON COUNTY, FLORIDA

IN RE: The Estate of: RICHARD SAMPSON PORTER, deceased.

CASE NO: 98-468-CA

W.J. SPRADLEY, JR., GILBERT BIRDWELL, JAMES LEE ALSTON and ALBERT ALSTON,

Plaintiffs,

vs.

DONALD BAILEY,

Defendant.

W.J. SPRADLEY, JR., EDWARD CAMPBELL, as Representative of the CAMPBELL REUNION MEMORIAL,

CASE NO: 98-10-CA

Plaintiffs,

vs.

OLD HARMONY BAPTIST CHURCH, BOARD OF TRUSTEE OF THE OLD HARMONY BAPTIST CHURCH, WILLIAM BAILEY, JAMES EMORY SPRADLEY,

WAYNE HEATHERLY and
RODNEY WATTS,
Defendants,

vs.

WILLIAM E. REAMS, as
Executor of the Estate of
RICHARD SAMPSON
PORTER, deceased,

INTERVENOR.
_____/

ORDER ON ALL PENDING MOTIONS

This cause came to be heard on all pending motions, and the Court having heard argument of counsel, and being otherwise advised in the premises, it is herewith ordered and adjudged:

1. Plaintiffs/Counter-Defendant's Partial Motion for Summary Judgment for personal property and real property is herewith granted. Defendant/Counter-Plaintiff (Old Harmony Baptist Chruch) shall take nothing by said suit on its counterclaim and Plaintiffs/Counter-Defendants (W. J. Spradley, Jr. and Edward Campbell, as Representative of the Campbell Reunion Memorial) shall go hence without day.

2. The Intervenor's (William E. Reams, as Executor of the Estate of Richard Sampson Porter, deceased) Motion to Dismiss and Motion for Sanctions is denied.

3. Defendant/Counter-Plaintiff's (Old Harmony Baptist Church) Motion for Joinder the Trustee of Harmony Baptist Church is denied.

4. Defendant/Counter-Plaintiff's (Old Harmony Baptist Church) Motion for Sanctions filed on or about May 3, 2000, is denied.

5. Copies of all of the Harmony Baptist Church's minutes, papers and documents in the possession of W.R. Spradley, III, shall be copied and made available to the Trustee of Harmony Baptist Church.

6. The Court shall reserve jurisdiction regarding any motions for attorney's fees and costs, and the Court shall reserve jurisdiction to resolve any pending issues of attorney's fees and costs relating to other discovery disputes previously been ruled upon by the Court.

7. The Court reserves jurisdiction regarding the issue of any attorney's fees and costs relating to the Bailey case and to enter a final judgment.

8. The Court reserves jurisdiction to enter a final judgment regarding the boundaries the two (2) acres, more or less, concerning the church property as that deed is being reformed by the Court pending a further report from the Court appointed surveyor to complete a boundary survey that will be made a part of The Judgement.

DONE AND ORDERED in Starke, Bradford, Madison County, Florida this 7 day of August, 2000, nunc pro tunc to July 14, 2000.

/s/ R.A. Green
R.A. GREEN
Senior Circuit Court Judge

copies furnished to:

Stephen C. Bullock, Esquire
David W. Collins, Esquire
James Ronald Zant, Esquire

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing has been furnished by facsimile to J.R. Zant, Esquire (850-973-6166); William J. Spradley, II, Esquire (904-356-3454); Dave Collins, Esquire (850-997-5852); Steven Bullock, Esquire (904-755-4524) and Nancy Nydam, Court Administrator (904-758-2162).

/s/ Barb Lunier
Administrative Assistant II

IN THE CIRCUIT COURT OF
THE THIRD JUDICIAL CIRCUIT
IN AND FOR MADISON COUNTY, FLORIDA

W.J. SPRADLEY, JR., and
VIRGINIA CAMPBELL CARDIN
as representatives of the SPRADLEY-CAMPBELL
REUNION MEMORIAL,

Plaintiffs/Counter-Defendants,

v. CASE NO: 98-010-CA

OLD HARMONY BAPTIST CHURCH, BOARD OF TRUSTEES OF THE OLD HARMONY BAPTIST CHURCH, WILLIAM BAILEY, JAMES EMORY SPRADLEY, WAYNE HEATHERLY and RODNEY WATTS,

Defendants/Counter-Plaintiffs,

v.

WILLIAM E. REAMS, as Personal Representative de Bonis non Administratis of the Estate of Richard Sampson Porter (deceased), Intervenor.

_____/

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT IN PART AND DENYING IN PART

(Filed Dec. 20, 1999)

THIS CAUSE comes before the Court upon the various motions for summary judgment. Having carefully considered the record, all evidence, and being advised in the applicable law, **THE COURT FINDS** as follows:

1. Plaintiff's motion for summary judgment against the estate of Richard Sampson Porter ("Porter") is *granted*. Any claim to the four-acre reservation would be on behalf of the

heirs of Porter as established at the time of his death.

2. Plaintiff's motion for summary judgment against Defendants Old Harmony Baptist Church and named individuals is *granted*. Defendant Old Harmony Baptist Church is a different religious organization than the Old Harmony Baptist Church which disbanded circa 1947.

3. Defendant's motion for summary judgment against Plaintiffs Spradley, *et al.*, is *granted*. Plaintiffs are unable to establish a right to the property through the doctrine of adverse possession under color of title because none exists. Plaintiffs are unable to establish adverse possession without color of title because of failure to comply with Florida Statutes section 95.18 (1999). Finally, the Court finds that the purported lease between Spradley and the Campbell Family Reunion is ineffectual to convey right of action in the Campbell Family Reunion. (Not reached is the question of any rights conferred by law on the right of the survivors to use and maintain a cemetery in which their forebears are interred.)

4. The deed from Porter to Spradley of 1889 is hereby reformed to describe two (2) two-acre parcels reserved: one to the grantor of two acres, more or less, and one to Old Harmony Baptist Church of two acres, more or less.[1]

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[1] The actual descriptions may be derived from the referenced deed read *in pari materia* with the bond (mortgage) of

5. Because of an interim conveyance from Porter to Madison County, there are now four parcels involved: one of one hundred fifty-six (156) acres, more or less, with title in W.J. Spradley, Jr. (life estate pursuant to deed from W.J. Spradley, Sr. of 1952); one parcel of two acres, more or less, with title in the trustees of Old Harmony Baptist Church as it existed at the time of its extinction circa 1947; one parcel of one acre, more or less, with title in Madison County, Florida (pursuant to deed from Porter to Madison County, 1901); one parcel of one acre, more or less, with title in the heirs of Richard Sampson Porter. (The net size of some or all of these parcels may require adjustment due to earlier eminent domain proceedings.)

6. The Court shall receive evidence from the parties to determine the two remaining issues relative to the title of the affected realty:

   a. The identify of the heirs of Richard Sampson Porter as they existed at the time of his death; and

   b. The identity of the trustees of Old Harmony Church as it existed at the time of its extinction circa 1947.

ORDERED in chambers on December 20, 1999.

/s/ R.A. Green
R.A. GREEN, JR.,
SENIOR CIRCUIT JUDGE

1885 from Spradley to Porter, and the 1901 deed from Porter to Madison County.

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was hand-delivered to all parties through counsel on Monday, December 20th, 1999.

_____
Deputy Clerk/Judicial Assistant

/pao

199900004456
Filed for Record in
MADISON COUNTY, FL
TIM SANDERS
On 12-20-1999 At 02:56 pm.
SUMM JUDG .00
OR Volume 529 Page 342 – 343

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Florida 32399-1850
Telephone No. (850) 488-6151
September 26, 2001

CASE NO.: 1D00-3169
L.T. No.: 98-010-CA

W.J. Spradley, Jr., Edward Campbell, Et al. v. Spradley-Campbell Reunion Memorial Et Al.

Appellant/Petitioner(s), Appellee/ Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion filed August 28, 2001, for rehearing, rehearing en banc, certification is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

Stephen C. Bullock William J. Spradley, III J.R. Zant
David W. Collins

jm

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

[SEAL]

IN THE FIRST DISTRICT
COURT OF APPEAL

IN THE CIRCUIT COURT, THIRD
JUDICIAL CIRCUIT, IN AND FOR
MADISON COUNTY, FLORIDA

W.J. SPRADLEY, JR., EDWARD CAMPBELL and VIRGINIA CAMPBELL CARDIN as Representatives of the SPRADLEY-CAMPBELL REUNION MEMORIAL

Plaintiffs/Appellants,

CASE NO.: 98-0010-CA

OLD HARMONY BAPTIST CHURCH, BOARD OF TRUSTEES OF THE OLD HARMONY BAPTIST CHURCH, WILLIAM BAILEY, JAMES EMORY SPRADLEY, WAYNE HEATHERLY and RODNEY WATTS,

Defendants/Appellees,

NOTICE OF APPEAL

(Filed Aug. 11, 2000)

WILLIAM E. REAMS, as PERSONAL REPRESENTATIVE DE BONIS NON ADMINISTRATIS OF THE ESTATE OF RICHARD SAMPSON PORTER, DECEASED,

Intervenor/Appellee.

_____/

NOTICE IS GIVEN that W.J Spradley, Jr., Edward Campbell, Virginia Campbell Cardin, Plaintiffs/Appellants, appeal to the First District Court of Appeal. Portions of the attached Final Orders dated 3/17/99, 4/26/99, 12/20/99, 7/27/00 and 8/7/00 are being appealed. The nature of these attached orders are final orders. The

Appellants assert the Court has committed the following errors:

1. The Plaintiffs appeal the Court's granting of Old Harmony Baptist Church's Motion for Summary Judgment against W.J. Spradley, Jr. on December 20, 1999. The Court ruled on December 20, 1999 "Old Harmony Baptist Church" established in 1996 was not "Harmony Baptist Church" that was in existence between the 1840s and 1940s even though it filed pleadings alleging that it was the same church in existence between 1840s and 1940s. The Court should have dismissed Old Harmony Baptist Church from the lawsuit before the Motion for Summary Judgment hearing because Old Harmony Baptist Church lacked standing to be in this lawsuit.

2. The Court committed error by finding the Plaintiffs failed to prove adverse possession with or without color of title. Plaintiffs' Motion for Summary Judgment was uncontradicted and proved adverse possession with and without color of title.

3. The Court committed error by not granting the Plaintiffs' Motion for Dismissal when the Plaintiffs filed a Motion to Dismiss/Strike the Old Harmony Baptist Church's pleadings because this party failed to show in its pleadings it had standing and failed to show a deraignment of title in accordance with Florida Rules of Civil Procedure.

4. The Court committed error when the Defendants were allowed to file an Answer and Counterclaim in violation of the Florida Rules

of Civil Procedure after the expiration of 20 days after the Plaintiffs' injunction was filed.

5. The Court committed error by sua sponte reforming the 1889 deed. There were no pleadings filed by the parties asking for reformation. There was no evidence introduced showing a mistake or fraud was committed by clear and convincing evidence.

6. The Plaintiffs' due process rights were violated because the Court made a finding of reformation without a trial.

7. The Court committed error by ruling two acres belonged to "Harmony Baptist Church" without any evidence being introduced, proving "Harmony Baptist Church" had title to the two acres in dispute.

8. The Court committed error by awarding two acres in dispute to William Bailey as trustee of "Harmony Baptist Church" when "Harmony Baptist Church" was not a party to this litigation.

9. The Court committed error by relying upon the testimony of Mr. Poppell when Mr. Poppell testified it was impossible for him to find the exact location of the two acres in dispute while relying upon the recorded instruments. The Court committed error by finding an exact location of the two acres of disputed land when the exact location was not ascertainable by reviewing the recorded documents in the courthouse.

10. The Court committed error by setting the boundaries of the two acres in dispute by relying on the speculative testimony of the surveyor.

11. The Court committed error by refusing to merge the disputed four acres and making it part of the 160 acre tract when testimony was introduced the exact four acre location was not ascertainable.

12. The Court committed error by finding one acre in dispute belonged to the heirs of R.S. Porter by reforming the 1889 deed. The Court committed error by rejecting the stipulation of Mr. Zant during the Motion for Summary Judgment hearing in which he stipulated on the record that W.J. Spradley, Jr. proved adverse possession without color of title to the one acre that was being claimed by the estate of R.S. Porter.

13. The Court violated the due process rights of the Plaintiffs by reforming the 1889 deed on behalf of R.S. Porter's heirs and by not giving the Plaintiffs a chance to have a reformation trial.

14. The Court committed error by denying the Plaintiffs' Motion for Sanctions under Chapter 57.105, Florida Statutes when the Defendants' pleadings contained frivolous allegations and lacked merit.

O'HARA, SPRADLEY & WATERS

/s/ William J. Spradley, III
William J. Spradley, III
Florida Bar No.: 442364
One Independent Dr., Ste. 1601
Jacksonville, FL 32202-5060
(904) 356-1955
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to Dave Collins, Esquire, P.O. Box 541, Monticello, FL 32341, J.R. Zant, Esquire, P.O. Box 14, Madison, FL 32341, Stephen Bullock, Esquire, 10 N. Columbia St., Lake City, FL 32055 and William Bailey, Trustee of Harmony Baptist Church, Route 1, Box 8B, Lamont, FL 32336 this 11th day of August, 2000.

/s/ William J. Spradley, III
ATTORNEY

DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

W.J. SPRADLEY, JR., EDWARD CAMPBELL and VIRGINIA CAMPBELL CARDIN as Representatives of the SPRADLEY-CAMPBELL REUNION MEMORIAL,

Plaintiffs/Appellants,

v.

OLD HARMONY BAPTIST CHURCH, BOARD OF TRUSTEES OF THE OLD HARMONY BAPTIST CHURCH, WILLIAM BAILEY, JAMES EMORY SPRADLEY, WAYNE HEATHERLY and RODNEY WATTS,

Defendants/Appellees,

v.

WILLIAM E. REAMS, as PERSONAL REPRESENTATIVE DE BONIS NON ADMINISTRATIS OF THE ESTATE OF RICHARD SAMPSON PORTER, DECEASED,

Intervenor/Appellee.
_____/

CASE NO.: 1D00-3169

LOWER CASE NO: 98-010-CA

MOTION FOR REHEARING/ALTERNATIVE MOTION FOR EN BANC PROCEEDINGS/ALTERNATIVE MOTION FOR CERTIFICATION

COMES NOW, Appellants, W.J. SPRADLEY, JR., EDWARD CAMPBELL and VIRGINIA CAMPBELL CARDIN as Representatives of the SPRADLEY-CAMPBELL REUNION MEMORIAL ("Appellants"), pursuant to 9.330(a), Fla. R. App. P., and:

1. Request a rehearing on the issues regarding this Court's Order dated August 13, 2001, or,

2. Alternatively pursuant to 9.331, Fla. R. App. P., requests an En Banc proceeding, and/or,

3. Request certification, pursuant to 9.030(a)(2)(B) and 9.125, Fla. R. App. P., of the issues outlined herein to the Florida Supreme Court.

I. ARGUMENT

1. Being ever so mindful of the limited scope for rehearing, the condensed issues presented for rehearing are[1]:

(A) The Per Curiam Opinion if allowed to stand, in essence changes two (2) hundred years of real property law in the State of Florida namely a conveyance can now be made by deed absent the necessary call points: absent a complete legal description; absent a deed between grantor and grantee; and finally, absent the legal existence of a entity in the capacity of grantee.

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[1] *Banderas v. Advance Petroleum*, 716 So. 2d 876 (Fla. 3rd DCA 1998); *Lawyers Title Insurance Corporation v. Reitzes*, 631 So. 2d 1100 (Fla. 4th DCA 1993).

(B) Second, the Per Curiam Opinion, if allowed to stand in essence, allows the government, via the courts, to cross the line between church and state established over two (2) hundred years ago mandated in our state and federal Constitutions to formulate and decide church policy without any church bylaws, manifestoes or proclamation, and established the criteria for appointing church Trustees, and then in fact appoint a church Trustee.

2. Regarding the first issue, by Order of this Court dated August 13, 2001 (attached hereto as Exhibit "A"), the Per Curiam Opinion in essence affirms Judge Green's Sua Sponte Order of December 20, 1999, reforming without a trial, the 1889 Porter deed by placing title of two (2) acres not described into the hands of an abandoned church (Harmony Baptist Church) that ceased to exist in 1947. It is believed that this Court overlooked the fact that: (1) there is no deed from Porter or Spradley, or anybody to Harmony Baptist Church; (2) there is no complete legal description of two (2) acres for church property (i.e. . . . Judge Green told the surveyor to simply use his best judgment and go find 2 acres); and (3) the Court appointed grantee. Harmony Baptist Church, ceased to exist in 1947 and consequently there was no legal entity in existence who could stand in the shoes as grantee. It is believed this Court may have overlooked the application of *Jarrell v. McRainey,* 65 Fla. 141, 61 So. 240 (Fla. 1913); *Mitchell v. Thomas,* 467 So. 2d 326 (Fla. 2nd DCA 1985) Rehearing Denied 1985; *Hammond v. Hacker,* 111 So. 511 (Fla. 1927) to these facts.

3. Regarding the second issue, Judge Green's Order violated the long established principle of law concerning

the division between church and state. Judge Green's Order, which if stands under the Court's Per Curiam Opinion, allows the government, via the courts, to decide without any supporting church records, bylaws, or proclamations that only a person who once went to Harmony Baptist Church before its demise in 1947 and who had been baptized in the church would be the Trustee for purposes of holding title to real property. It is believed that this Court may have overlooked these facts and the "excessive entanglement" caused by Judge Green's Order below. *Koerner v. Borck,* 100 So. 2d 398 (Fla. 1958).

II. EN BANC PROCEEDINGS

Pursuant to 9.331 Fla. R. App. P., Appellants contend that the following issues are of great importance:

1. Regarding the first issue, by Order of this Court dated August 13, 2001 (attached hereto as Exhibit "A"), the Per Curiam Opinion in essence affirms Judge Green's Sua Sponte Order of December 20, 1999, reforming without a trial the 1889 Porter deed by placing title of two (2) acres not described into the hands of an abandoned church that ceased to exist in 1947. It is believed that the Court overlooked the fact that: (1) there is no deed from Porter or Spradley, or anybody to Harmony Baptist Church; (2) there is no complete legal description of two (2) acres for church property (i.e. . . . Judge Green told the surveyor to simply use his best judgment and go find 2 acres); and (3) the Court appointed grantee. Harmony Baptist Church, ceased to exist in 1947 and consequently there was no legal entity in existence who could stand in the shoes as grantee. It is believed this Court may

have overlooked the application of *Jarrell v. McRainey*, 65 Fla. 141, 61 So. 240 (Fla. 1913); *Mitchell v. Thomas*, 467 So. 2d 326 (Fla. 2nd DCA 1985) Rehearing Denied 1985; *Hammond v. Hacker*, 111 So. 511 (Fla. 1927) to these facts.

2. Regarding the second issue, Judge Green's Order violated the long established principle of law concerning the division between church and state. Judge Green's Order, which if stands under the Court's Per Curiam Opinion, allows the government, via the courts, to decide without any supporting church records, bylaws, or proclamations that a person who once went to Harmony Baptist Church before its demise in 1947 who had been baptized in the church would be the Trustee for purposes of holding title to real property. It is believed that this Court may have overlooked these facts and the "excessive entanglement" caused by Judge Green's Order below. *Koerner v. Borck*, 100 So. 2d 398 (Fla. 1958).

I express a belief, based on a reasoned and studied professional judgment, that the panel decision is of exceptional importance.

/s/ Stephen C. Bullock
Stephen C. Bullock
Florida Bar No: 347264
Post Office Box 1029
Lake City, Florida 32056-1029
Telephone: (386) 752-3213
Facsimile: (386) 755-4524
Attorneys for Appellants

WHEREAFORE, Appellants move this Court to consider this issue En Banc.

III. SUGGESTION FOR CERTIFICATION TO THE FLORIDA SUPREME COURT

Pursuant to this Court's jurisdiction in 9.030(a)(2)(B), Fla. R. App. P., and the form set forth in 9.125(e), Fla. R. App. P., Appellants assert that the two (2) following concise issues should be decided by the Florida Supreme Court:

1. Regarding the first issue, by Order of this Court dated August 13, 2001 (attached hereto as Exhibit "A"), the Per Curiam Opinion in essence affirms Judge Green's Sua Sponte Order of December 20, 1999, reforming without a trial the 1889 Porter deed by placing title of two (2) acres not described into the hands of an abandoned church that ceased to exist in 1947. It is believed that the Court overlooked the fact that: (1) there is no deed from Porter or Spradley, or anybody to Harmony Baptist Church; (2) there is no complete legal description of two (2) acres for church property (i.e. . . . Judge Green told the surveyor to simply use his best judgment and go find 2 acres); and (3) the Court appointed grantee, Harmony Baptist Church, ceased to exist in 1947 and consequently there was no legal entity in existence who could stand in the shoes as grantee. It is believed this Court may have overlooked the application of *Jarrell v. McRainey*, 65 Fla. 141, 61 So. 240 (Fla. 1913); *Mitchell v. Thomas*, 467 So. 2d 326 (Fla. 2nd DCA 1985) Rehearing Denied 1985; *Hammond v. Hacker*, 111 So. 511 (Fla. 1927) to these facts.

2. Regarding the second issue, Judge Green's Order violated the long established principle of law concerning the division between church and state. Judge Green's Order, which if stands under

the Court's Per Curiam Opinion, allows the government, via the courts, to decide without any supporting church records, bylaws, or proclamations that only a person who once went to Harmony Baptist Church before its demise in 1947 and who had been baptized in the church would be the Trustee for purposes of holding title to real property. It is believed that this Court may have overlooked these facts and the "excessive entanglement" caused by Judge Green's Order below. *Koerner vs. Borck*, 100 So. 2d 398 (Fla. 1958).

A. STATEMENT AS TO WHY THE APPEAL IS OF GREAT PUBLIC IMPORTANCE OR WILL HAVE A GREAT EFFECT ON THE PROPER ADMINISTRATION OF JUSTICE THROUGHOUT THE STATE:

I expressly believe, based on a reasoned and studied professional judgment, that this appeal requires immediate resolution by the Supreme Court and (a) is of great importance or (b) will have a great affect on the administration of justice throughout the State.

/s/ Stephen C. Bullock
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Facsimile: (386) 755-4524
Attorneys for Appellants

The Per Curiam Decision affirms Judge Green's Order which will establish new precedent for real estate transactions throughout the State of Florida.

WHEREFORE, Appellants request this Court certify to the Florida Supreme Court the following two (2) questions:

A. Can a grantor convey real estate by deed without all the call points, without a complete legal description and without a separate deed to the intended grantee?

B. Can the Court decide church policy by using its discretion in setting the criteria for Trustee qualifications without any bylaws, proclamations or written church guidelines and then proceed to select a church Trustee for the purpose of holding legal title to real estate?

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to: J. R. Zant, Esquire, (850-973-6166) PO Box 14, Madison, Florida 32341-0014; William J. Spradley, III, Esquire (904-346-3166) 4811 Beach Boulevard, Suite 303, Jacksonville, FL 32207; Dave Collins, Esquire, (850-997-5852) P.O. Box 541, Monticello, FL 32345-0541, on this 28th day of August, 2001.

BRANNON, BROWN, HALEY,
ROBINSON & BULLOCK, P.A.

BY: /s/ Stephen C. Bullock
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Attorneys for Appellants

I hereby certify that I have complied with the font requirement of Rule 9.210(a).

BRANNON, BROWN, HALEY,
ROBINSON & BULLOCK, P.A.

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Attorneys for Appellants

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

W.J. SPRADLEY, JR., EDWARD CAMPBELL and VIRGINIA CAMPBELL CARDIN as Representatives of the SPRADLEY-CAMPBELL REUNION MEMORIAL,

Appellants,

v.

OLD HARMONY BAPTISH CHURCH, BOARD OF TRUSTEES OF THE OLD HARMONY BAPTIST CHURCH, WILLIAM BAILEY, JAMES EMORY SPRADLEY, WAYNE HEATHERLY and RODNEY WATTS,

Appellees,

v.

WILLIAM E. REAMS, as PERSONAL REPRESENTATIVE DE BONIS NON ADMINISTRATIS OF THE ESTATE OF RICHARD SAMPSON PORTER, Deceased,

Intervenor.

_____/

CASE NO. 1D00-3169

Opinion filed August 13, 2001.

An appeal from the Circuit Court for Madison County. R.A. Green, Jr., Senior Judge.

William J. Spradley, III, of O'Hara, Spradley & Waters, P.A.; and Brannon, Brown, Haley, Robinson & Bullock, P.A., Lake City, for Appellants.

David W. Collins, Monticello; and J.R. Zant, Madison, for Appellees/Intervenor.

PER CURIAM.

AFFIRMED.

ERVIN, DAVIS and VAN NORTWICK, JJ., CONCUR.

DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

W. J. SPRADLEY, JR., EDWARD CAMPBELL and VIRGINIA CAMPBELL CARDIN as Representatives of the SPRADLEY-CAMPBELL REUNION MEMORIAL,

Plaintiffs/Appellants,

v.

OLD HARMONY BAPTIST CHURCH, BOARD OF TRUSTEES OF THE OLD HARMONY BAPTIST CHURCH, WILLIAM BAILEY, JAMES EMORY SPRADLEY, WAYNE HEATHERLY and RODNEY WATTS,

Defendants/Appellees,

v.

WILLIAM E. REAMS, AS PERSONAL REPRESENTATIVE DE BONIS NON ADMINISTRATIS OF THE ESTATE OF RICHARD SAMPSON PORTER, DECEASED,

Intervenor/Appellee.
_____/

CASE NO: 1D00-3169

LOWER CASE NO: 98-010-CA

NOTICE OF SUPPLEMENTAL AUTHORITY

COME NOW, Appellants, W.J. SPRADLEY, JR., EDWARD CAMPBELL and VIRGINIA CAMPBELL CARDIN as Representatives of the SPRADLEY-CAMPBELL REUNION MEMORIAL ("Appellants"), pursuant to Rule 9.225, Fla. R. App. P., and herewith file this Notice of Supplemental Authority as follows:

1. Appellants contend that the trial judge, the Honorable R.A. Green, Jr., Senior Circuit Judge, departed from the essential requirements of law in abusing his discretion by sua sponte reforming the 1889 deed and by entering "Order Granting Motion for Summary Judgment in Part and Denying in Part" dated December 20, 1999 in which the Court indicated in paragraph 4:

> "The deed from Porter to Spradley of 1889 is hereby reformed to described to two (2) two-acre parcels reserved: one to the grantor of two acres, more or less, and one to Old Harmony Baptist Church of two acres, more or less."[1]

In the recently cited opinion, *Inglis v. First National bank, f/k/a First National Union Bank of North Carolina successor by merger to First Union National Bank of Florida successor and interest to the F.D.I.C., as receiver of Southeast Savings f/k/a First Federal Saving and Loan Association of Jacksonville*; et. al. *26 Fla. L. Weekly D2181 (September 2001)* in which a different panel of the First District Court of Appeal (Justice Wolf, Barfield and Lewis) concluded as a

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[1] The actual descriptions may be derived from the referenced deed *in pari materia* with the bond (mortgage) of 1885 from Spradley to Porter, and the 1901 deed from Porter to Madison County.

matter of law that a deed cannot be reformed after 20-years of the date it is recorded as being barred by the 20-year statute of limitations set forth in section 95.231(2), Florida Statutes. (A copy attached herewith).

Applied to the pending Motion for Rehearing/Alternative Motion for En Banc Proceedings/Alternative Motion for Certification, this Notice of Supplemental Authority brings to the Court's attention that based on the reasoning contained *Inglis*, supra, the Honorable R.A. Green, Jr. committed reversible error in sua sponte reforming the 1889 deed from Porter to Spradley which was recorded on February 3, 1906, ninety-five (95) years ago and is clearly barred by the 20-year statute of limitations.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to: J. R. Zant, Esquire, (850-973-6166) PO Box 14, Madison, Florida 32341-0014; William J. Spradley, III, Esquire (904-346-3166) 4811 Beach Boulevard, Suite 303, Jacksonville, FL 32207; Dave Collins, Esquire, (850-997-5852) P.O. Box 541, Monticello, FL 32345-0541, on this 20th day of September, 2001.

BRANNON, BROWN, HALEY,
ROBINSON & BULLOCK, P.A.

BY: Stephen C. Bullock
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Attorneys for Appellants

I hereby certify that I have complied with the font requirement of Rule 9.210(a).

BRANNON, BROWN, HALEY, ROBINSON & BULLOCK, P.A.

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Attorneys for Appellants

Real property – Reformation of deed – Limitation of actions – Trial court erred in determining that property owner's claim for reformation of deed to acquire co-owner's one-half interest in property was not barred by 20-year statute of limitations because the request for reformation was a compulsory counterclaim to co-owner's claim for partition – Holding of *Allie v. Ionata*, that a defensive compulsory counterclaim for recoupment of money damages could be maintained even if the statute of limitations applicable to the claim would otherwise bar recovery of claim had been brought as an independent action, is inapplicable where the remedy requested is delivery of interest in real property – Remand for reconsideration of claim for partition

BRENDA INGLIS, Appellant/Cross-Appellee, v. FIRST UNION NATIONAL BANK, F/K/A FIRST UNION NATIONAL BANK OF NORTH CAROLINA SUCCESSOR BY MERGER TO FIRST UNION NATIONAL BANK OF FLORIDA SUCCESSOR IN INTEREST TO THE F.D.I.C., AS RECEIVER OF SOUTHEAST SAVINGS F/K/A FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF JACKSONVILLE; DAVID E. COLSON; GEORGETTE S. COLSON: THE UNKNOWN SPOUSE OF BRENDA H. INGLIS; ANY AND ALL UNKNOWN PARTIES CLAIMING BY, THROUGH, UNDER, AND AGAINST THE HEREIN NAMED INDIVIDUAL DEFENDANT(S) WHO ARE NOT KNOWN TO BE DEAD OR ALIVE, WHETHER SAID UNKNOWN PARTIES MAY CLAIM AN INTEREST AS SPOUSES, HEIRS, DEVISEES, GRANTEES, OR OTHER CLAIMANTS; AND TENANT #1, TENANT #2, TENANT #3, AND TENANT #4, THE NAMES BEING

FICTITIOUS TO ACCOUNT FOR PARTIES IN POSSESSION, Appellees/Cross-Appellants. First District Case No. 1D00-3380. Opinion filed September 6, 2001. An appeal and cross-appeal from the Circuit Court for Duval County, W. Gregg McCaulie Judge. Counsel; James C. Cumbie, Jacksonville, for appellant/cross-appellee. Earl M. Barker, Jr. of Slott & Barker, Jacksonville, for appellees/cross-appellants.

(WOLF, J.) This is a timely appeal and cross-appeal from a final judgment entered in favor of appellee, Georgette Colson, on her claim for reformation of a deed to a certain parcel of real property and against appellant, Brenda Inglis, on her claim for partition on the same parcel of real property.

We conclude that the trial court erred in determining that Georgette Colson's claim for reformation of the deed was not barred by the 20-year statute of limitations set forth in section 95.231(2). Florida Statutes. We, therefore, reverse the judgment of the trial court ordering reformation of the deed and remand for reconsideration of the claim for partition in light of our decision. Because this issue is dispositive, we decline to address the other issues raised by appellant. We affirm as to the issue raised on cross-appeal without further discussion.

This case began in October 1997 when appellee First Union National Bank filed an action to foreclose a mortgage on real property located at 7313 Merrill Road, Jacksonville, Duval County, Florida. A warranty deed for the property had been filed in the official records of Duval County, Florida in 1975. This deed had conveyed the property to "David E. Colson and Georgette S. Colson

Colson, his wife and Clarence M. Thon, a single man." David Colson died in 1985. Clarence Thon died in 1994. Appellee Colson succeeded to David Colson's interest in the property. Appellant, as Mr. Thon's niece and personal representative to his estate succeeded to whatever interest he had in the property through his will which gave to her any interest he had at the time of his death in any real property.

In her answer to the foreclosure complaint, appellant admitted that she was an owner of record of the property, and she initiated a cross-claim against appellee Colson for partition of the property Appellee Colson subsequently filed answers to both the original foreclosure complaint and appellant's cross-claim. Appellee Colson also counterclaimed, asserting a cross-claim for reformation of the deed which argued that Clarence Thon's name had been placed on the deed merely to secure repayment of a $1,000 loan he had made to the Colsons to assist them in the purchase of the property. Appellant answered appellee Colson's cross-claim, asserting among her affirmative defenses that appellee Colson's cross-claim for reformation was barred both by the applicable statute of limitations and the doctrine of laches.

Appellant attempted to secure a summary judgment as to the statute of limitations defense. Relying on *Allie v. Ionato*, 503 So. 2d 1237 (Fla. 1987), the trial court determined that the reformation claim was not barred by the statute of limitations because the request for reformation was a compulsory counterclaim to appellant's cross-claim for partition.

The circuit court later entered a final judgment in favor of appellee Colson on her claim for reformation of the deed and against appellant on her claim for partition. The denial of appellant's claim for partition was expressly based on the trial court's determination that after reformation of the deed appellant had no ownership interest in the real property.

There is no dispute in this case that the deed sought to be reformed was recorded in the official records of Duval County in 1975. The version of section 95.231(2), Florida Statutes, in effect at the time of the recordation of the deed, stated as follows:

> After 20 years from the recording of a deed or the probate of a will purporting to convey real property, no person shall assert any claim to the property against the claimants under the deed or will or their successors in title.

§ 95.231(2), Fla. Stat. (1975). The language of this statute has not been changed over the years and remains the same today. *See* § 95.231(2), Fla. Stat. (2000). This court has held that claims for reformation of a deed, such as appellee Colson's claim here, are subject to the twenty-year limitation period set forth in section 95.231. Florida Statutes. *See Rigby v. Liles*, 505 So. 2d 598, 601 (Fla. 1st DCA 1987). Because both the underlying mortgage foreclosure and appellee Colson's cross-claim for reformation were filed more than 20 years from the date of recording of the deed, the only question in this case is whether the rule announced by the supreme court in *Allie v. Ionata*, 503 So. 2d 1237 (Fla. 1987), applied to appellee Colson's cross-claim for reformation such that the cross-claim

could proceed even though it would have been time-barred if asserted as an independent cause of action.

In *Allie,* the supreme court held that a defensive compulsory counterclaim for recoupment of money damages could be maintained by a party even if the statute of limitations applicable to the claim would otherwise bar recovery if the claim had been brought as an independent cause of action. *See id.* at 1239-40. While this decision would seem at least facially to support appellee Colson's position that her reformation claim could be maintained defensively even though otherwise time-barred, the supreme court's decision in *Rybovich Boat Works, Inc. v. Atkins,* 585 So. 2d 270 (Fla. 1991), forecloses appellee from obtaining the equitable relief sought in her reformation claim.

In *Rybovich,* the supreme court was asked to decide whether the holding in *Allie* allowed for the maintenance as a compulsory counterclaim of an otherwise time-barred claim for specific performance with regard to a parcel of real estate. *See id.* at 270. The supreme court held that the rule announced in *Allie* was inapplicable to the facts in *Rybovich* because the particular remedy requested was the delivery of a unique parcel of real estate as opposed to merely money damages. *See id.* at 271-72. The supreme court reasoned that, if it accepted the argument advanced by the counterclaimant, it would have the effect of placing a cloud on the title of any real property which had been the subject of a failed real estate sales contract until the point in time at which every conceivable lawsuit arising from the failed contract was time-barred. *See id.* at 271. The supreme court stated that during such a period the marketability and value of the property would be

reduced in contravention of Florida law which seeks to encourage the alienability of real property. *See id.* The supreme court specifically distinguished the remedy sought by the counterclaim at issue in *Allie* from the equitable relief sought by the counterclaim in *Rybovich* as follows:

> In sum, we do not believe the rationale of *Allie* applies whenever the particular remedy raised in counterclaim seeks the delivery of unique or nonfungible property such as real estate. The issue in *Allie* was money damages. With money, it does not matter which particular units are used as payment, and there is no serious restraint on property rights if the possibility of a defendant's counterclaim for money damages endures over the several years during which a plaintiff may bring a lawsuit. Moreover, no undue restraint on the alienability of property occurs if plaintiffs are required to offset their own money damages against the money damages they have inflicted on their defendants, even if the latter damages otherwise are time-barred.

Id. at 272.

In this case, appellee Colson sought reformation of the deed in order to acquire appellant's one-half ownership interest in the property, as reflected on the deed, thereby giving herself exclusive ownership interest in the property as a whole. It is difficult to see how appellee Colson's claim seeking delivery of appellant's one-half interest in the property was any different than the counterclaimant's request for delivery of the entire parcel of real estate at issue in *Rybovich*. We, therefore, conclude

that the claim for reformation was barred by the running of the limitations period set forth in section 95.231(2) Florida Statutes.

Appellant further urges us to reverse the denial of her request for partition and order the trial court to grant this relief. While we agree that the trial court's denial of the claim for partition was inextricably intertwined with its granting of the request for reformation, we decline to determine appellant's entitlement to such relief in this court. We, therefore, reverse and remand this case to the trial court for reconsideration of appellant's claim for partition in light of this court's decision on the claim for reformation of the deed. (BARFIELD and LEWIS, JJ., concur.)

IN THE CIRCUIT COURT
IN AND FOR MADISON COUNTY, FLORIDA
THIRD JUDICIAL CIRCUIT

W.J. SPRADLEY, JR., and EDWARD CAMPBELL AND VIRGINIA CAMPBELL CARDIN as Representatives of the SPRADLEY-CAMPBELL REUNION MEMORIAL,

Plaintiffs,

v.

OLD HARMONY BAPTIST CHURCH, BOARD OF TRUSTEES OF THE OLD HARMONY BAPTIST CHURCH, WILLIAM BAILEY, JAMES EMORY SPRADLEY, WAYNE HEATHERLY and RODNEY WATTS,

Defendants,

v.

WILLIAM E. REAMS, AS PERSONAL REPRESENTATIVE DE BONIS NON ADMINISTRATIS OF THE ESTATE OF RICHARD SAMPSON PORTER, DECEASED,

Intervenor.

CASE NO.: 98-010-CA

_____/

ORDER

(Filed Jan. 10, 2000)

This cause, having come before the court on Plaintiffs' Motion for Rehearing of Defendants' Motion for

Summary Judgment and the court having heard the argument of counsel it is hereby ORDERED and ADJUDGED that Plaintiffs' Motion for Rehearing is DENIED.

ENTERED in Starke, Florida, on this 7 day of January, 2000.

/s/ R. A. Green
R. A. GREEN, Jr.
Senior Judge

Copies to all counsel of record on 1/7/2000 (J. R. Zant, Dave Collins, James Parris, W. J. Spradley, III) at the record addresses of each.

IN THE CIRCUIT COURT OF THE
THIRD JUDICIAL CIRCUIT
IN AND FOR MADISON COUNTY, FLORIDA

CASE NO.: 98-010

W.J. SPRADLEY, JR., and EDWARD CAMPBELL as Representative of the CAMPBELL REUNION MEMORIAL,

Plaintiffs,

v.

OLD HARMONY BAPTIST CHURCH, BOARD OF TRUSTEES OF THE OLD HARMONY BAPTIST CHURCH, WILLIAM BAILEY, JAMES EMORY SPRADLEY, WAYNE HEATHERLY and RONDNEY WATTS,

Defendants,

v.

WILLIAM E. REAMS, as Executor of the Estate of RICHARD SAMPSON PORTER, deceased,

Intervenor.
_____/

COUNTY OF MADISON X
X
STATE OF FLORIDA X

Deposition of DEBRA BASSETT, taken on behalf of the Plaintiffs herein, pursuant to Notice of Taking Deposition, at the Madison County Courthouse Annex, 112 East Pincney Street, Room 107, Madison, Florida, on Thursday, the 14th day of October 1999, commencing at 2:00 p.m., before Vivian Tupou, Registered Professional Reporter,

Certified Shorthand Reporter and Notary Public in and for the State of Florida at Large.

APPEARANCES

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and
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TOM HAYWARD, Esquire
2367 Centerville Road
Tallahassee, Florida 32308
Attorney for the Deponent

* * *

[17] BY MR. SPRADLEY:

Q But is it fair to say that she was – between 1900 and 1948, she – Ida Porter Spradley was assessed on a hundred and sixty acres?

A Yes, sir.

Q Okay. And we can go through your notes here, and your notes indicate between 1900 and 1948 – without going through every year – it indicates whether or not there was an exemption. If there was not an exemption, it was not, and she paid the taxes.

A Yes, sir.

Q Okay. Now, from 1900 – from 1948, the same deed that I read in the beginning of the deposition, which was described as PIN number 130, was the same deed that Ida Porter Spradley had when she was assessed a hundred and sixty acres on between 1900 and 1948; is that correct?

A Repeat that, please?

Q Okay. That deed I read at the beginning of the deposition, which is PIN number 130, that piece of property is the piece of property that Ida Porter Spradley was assessed on for a hundred and sixty acres between the year 1900 and 1948.

A Yes, sir.

Q Okay. And also that deed has the language [18] in it that states less four acres reserved; is that correct?

A Yes, sir.

Q And so if there was an active church during – if there was an active church on that piece of property, located on this legal description somewhere, Ida Porter Spradley was still assessed on a hundred and sixty acres even though there may have been an active church there; is that correct?

A Yes, sir.

Q Okay. I guess you'll also agree that the deed that I read to you at the beginning of the deposition, which is referred to as PIN number 130, and does indeed have language that those four acres are reserved, does not have any reference to a church, no reference to a church. And there's basically between 1900 and 1948 – also there's no deed filed by the Harmony Baptist Church or any other church during that time frame.

A That's correct.

MR. HAYWARD: She wants to limit that answer to – as evidenced by records that she has –

MR. SPRADLEY: That's fine.

MR. HAYWARD: – in the property appraiser's office.

* * *

[20] R.S. Porter or to anybody else other than to Ida Porter Spradley?

A Now, you said certificates. I don't know anything about certificates.

Q Okay. I guess I – let me put it to you this way. Do you have any notations according to the research that you did that R.S. Porter or anybody else was assessed on any part of this hundred and sixty acres other than Ida Porter Spradley between 1900 and 1948? Was there anybody else that would have been assessed on this piece of property besides Ida Proter Spradley?

A Between 1900 –

Q Yeah, between –

A - and 1948?

Q - the year 1900 and 1948?

A No, sir.

Q Is it fair to say as well that according to the tax appraiser's office for the year 1900 and 1948, according to the appraiser's office, that it would appear that for this time frame, between 1900 and 1948, that Ida Porter Spradley was the record title holder on this piece of property that's described in PIN number 130?

A Yes, sir.

[21] Q Ida Porter Spradley, as a side note, conveyed her interest in the piece of property in question to her son, W.J. Spradley, Sr., in which she then received a life estate from her son, W.J., Jr. - excuse me, W.J., Sr., W.J. Spradley, Sr., in 1918. I noted that the property was assessed on a hundred and sixty acres, and we've already gone over that, but should there have been any type of change -

A (Witness shakes head.)

Q Are you able to answer that question with that type of legal transaction?

A I do not know the answer to that question.

Q In 1949 - we're moving pretty fast here - we've almost gone through fifty years, so we're almost halfway through.

In 1949 it appears that the property - title to the property changed and W.J. Spradley, either senior or

junior, became – began to be assessed on a hundred and sixty acres versus Ida Porter.

A Correct.

Q Okay. So beginning in 1949, W.J. Spradley or – I don't know if you can tell me specifically if it's W.J. Spradley, Sr. or W.J. Spradley, Jr., was assessed on a hundred and sixty acres in 1949?

[22] A Ida Spradley to W.J. Spradley.

Q W.J. Spradley, Sr.?

MR. HAYWARD: It doesn't say.

Q Okay. Well, I think we can all agree here today that it was to W.J. Spradley, Sr., because Ida Porter Spradley died in 1949. So in 1949 W.J. Spradley, Sr., he was the son of Ida Porter Spradley, was assessed on – for a hundred and sixty acres.

A Yes, sir.

Q And this hundred and sixty acres would have been the same hundred and sixty acres that we've talked about, which is described in PIN number 130, and has the four acre reservation on it; is that correct?

A Yes, sir.

Q And also the 1950 and 1951 and 1952, W.J. Spradley, Sr., was likewise assessed for a hundred and sixty acres, which includes the four-acre reservation which is described in your property PIN number 130.

A Yes.

Q As far as looking at your records, and going from 1900 to 1952, is it fair to say that the Spradleys, Ida Porter

Spradley, W.J. Spradley, Sr., was assessed on a hundred and sixty acres and paid taxes, and when the taxes were paid the taxes were [23] paid to include the land described as four acres reserved.

A Yes, sir.

Q Is that correct?

A That's correct, sir.

Q Okay. If there was an active church on this piece of property described in PIN number 130 and that church was there in existence between 1848 and 1948, with the church doors closed, does your office have any documentation as far as the location or the – indicating the legal significance or location of this church between the years 1848 and 1948, according to your research that you did?

A No.

Q Okay. Between 1848 and 1948, was there any type of notation in the tax assessor's records to indicate that there was two cemeteries on this piece of property, on the hundred and sixty acres, a cemetery – a black cemetery and a white cemetery, located somewhere in the four acres reserved or somewhere on the hundred and sixty acres between 1848 and 1948?

A I don't know that. I don't know the answer to that.

Q I'm just saying from your research. From [24] your research today, what you have in your files, do you have anything in your records to indicate that between 1848 and 1948 that there was some type of filing in the

records documenting a black cemetery or a white cemetery?

A No.

Q The next according to your records and your notes and your research that was done, it looks like in 1953, according to your records, the legal owner of the property changed from W.J. Spradley, Sr. to W.J. Spradley, Jr., and that in fact took place in 1953; is that correct?

A Yes.

Q In 1953 it appears that despite the fact the Spradley family, Ida Porter Spradley and W.J. Spradley, Sr. were assessed to pay taxes on a hundred and sixty acres with some exemptions here and there, it appears in 1953 it changed from a hundred and sixty acres to a hundred and fifty-six acres that were being assessed on. Is that correct?

A Yes.

Q Now, you – in doing your research, can you give me an explanation – I know you were not the tax assessor during that time frame – but in your research and maybe you were talking to other [25] individuals doing your research or maybe looking at some statutes or conferring with your attorney, do you have any explanation for why the tax assessor's office changed the acreage from a hundred and sixty acres to a hundred a fifty-six acres, whereas before between 1900 and 1952, the Madison County tax assessor's office consistently set up on a hundred and sixty acres?

A Simply by Deed Book 77, page 321, would be my best guess.

Q Okay. But this same Deed Book, Number 77, Page 321, was still on file – well, I see what you're saying. The new deed was filed, but the deed that was filed in Book 77, 321, is the same deed – same deed that tracks between Ida Porter Spradley and –

MR. HAYWARD: The same legal description.

Q It was the same legal description between Ida Porter Spradley – R.S. Spradley and Ida Porter Spradley, W. J. Spradley, Sr., and then to W.J. Spradley, Jr., the same legal description that's in all these deeds as reflected in Deed Book number 77, 321.

Do you have an explanation other than this deed for the change in the acreage from a hundred and sixty acres to a hundred and fifty-six acres?

[26] A No, sir. I don't have an explanation.

Q Okay. Are you aware of any – are you aware of any statutes that would have been passed that would affect the tax assessor's office or anything like that that would have played a role in this?

A Mr. Spradley, that was before I was born.

Q Okay.

A I'm sorry. I can't help you with that.

Q Okay.

A I can't answer that.

Q According to the records it appears – let me ask you this. Do you know the date that – do you know the date that Highway 150 South intersected the piece of property described in PIN number 130?

A No, sir, but I do have in my possession a road right-of-way map from the state of Florida DOT that was dated –

Q 12/14/64?

A – 12/14/64.

A – 12/14/64. And that was State Road 150 from Erida to I-10. And that is the right of way with – what we call now the County Road 328.

Q Okay.

A I don't know, but that's the date – that's the only date that I have.

Q Can you help us out with this? This

* * *

[68] Q – and it has a little star.

A Mm-hmm.

Q Can you explain that? What does that mean?

A That means that there's a deed –

Q Okay.

A – to that, but it's unclear so we just – I instructed her to star it.

Q All right. This one acre – assuming that this is a one-acre square that's located right here. Does this appear that the road, this Highway 150 South, runs straight through this one-acre square? This one-acre square on this piece of property, is this the Madison County or the school that was – that was given to Madison County school board by R.S. Porter?

A Without digging through all this, yes, I believe that's right. If you want to wait to be sure – I can get the deed itself.

Q This square right here indicates the one-acre square that was deeded to the Madison County school board. Is this accurate?

A That's the legal description, period.

Q Okay. As far as you're concerned that appears to be an accurate location as of today; is that correct?

[69] MR. HAYWARD: Yes or no.

A Yes.

Q Okay. And this square, it represents the one-acre – one square acre.

A Yes.

Q And in spite of the fact that – despite the fact that since 1901 – the early 1900s, R.S. Porter deeded a one acre to the Madison County school board. From that period of time until now there's never been any type of exemption given.

A It's never been on the tax roll.

Q The Madison County school board.

A It's still not on the tax roll.

Q It is your assessment that there's a one acre – the one acre that was given to the Madison County school board is part of the four acres that's reserved?

A Repeat that, please?

Q Okay. The one acre that was deeded –

A Okay.

Q – from R.S. Porter to the school board, is that one of the one acres that's part of the four acres that's been reserved for the cemetery by your office?

A I do not know that.

[70] Q Is it a good possibility?

A A good possibility.

Q Okay.

A But now it sits in the middle of the road. It may not have been.

Q Okay. Let met ask you this. I want you to look at this.

A Okay.

Q In this particular case, if the four acres that are reserved in this case are contiguous and adjacent and they form a square –

A Mm-hmm.

Q And that means there would be an acre there, one acre there, one acre here and one acre there, four acres. A four-acre square, contiguous in a square.

A Mm-hmm.

Q Okay? Assuming that's the land here back, the land that was deeded in 1885 – would you agree that the road, in this case Highway 150 South, would have intersected with the second acre which would have been the

acre north of the acre which is described or drawn on your diagram, and assuming that it was where it appears to be on your map –

A I don't know.

MR. HAYWARD: Your question is assuming that [71] the four acres that was exempted –

MR. SPRADLEY: Right.

MR. HAYWARD: – is a square –

MR. SPRADLEY: That's right.

MR. HAYWARD: – and assuming that it is where it appears to be on that map –

MR. SPRADLEY: Right.

MR. HAYWARD: – is your question that does the road appear to run through –

MR. SPRADLEY: That's correct.

MR. HAYWARD: – that four acres?

MR. SPRADLEY: That's correct.

MR. HAYWARD: You can answer that question.

THE WITNESS: Yes, it does.

BY MR. SPRADLEY:

Q Okay. And if that's the case, then I – leave that go for a second. The one acre that's on the – that appears to be the acre that was deeded to the school board, that appears on Highway 150 South, has taken a majority of that acre. Do you agree with that?

A Yes, sir.

Q And it appears that the remainder of that acre with the exception of a small amount on the left appears to be on Mr. Spradley's – W.J. Spradley's [72] land. Do you agree with that?

A Yes, sir.

Q Okay. So assuming that – well, that's not assuming, that's fact. So the next question I have is if you assume, and if the judge assumes – okay? – that the four acres that were reserved were contiguous and they constituted a square and they were adjacent to each other, and that's the way the land appeared back in 1885 when the land was deeded, then it would appear, do you agree, that the road, Highway 150, would have intersected the second acre which would have been the top right corner – right here?

A Where are you getting this acre from? You're losing me here.

Q Okay. I'm just saying there's four acres in question.

A Right.

Q Okay. And assuming –

MR. HAYWARD: I think she can testify – she has testified that the road intersects the four acres.

MR. SPRADLEY: Okay.

MR. HAYWARD: Now, what you designate as one, two, three and four –

MR. SPRADLEY: Right, right.

MR. HAYWARD: – acres –

[73] MR. SPRADLEY: Right. I understand what you're saying.

BY MR. SPRADLEY:

Q So you would agree that this is a four-acre tract, the highway would intersect two acres, two out of the four acres.

A You could assume that, yes.

Q Okay. And you could also assume that it appears that in the second acre that I'm pointing my pencil to – I'll put a little two there – the second acre that the highway goes through takes in a large portion of the second acre.

A Yes.

Q Okay. And it would appear also that a portion of that second acre would also be part of Mr. Spradley's land, which is the other side of Highway 150 South.

A Yes.

Q Okay. And I guess according to this – what do you call this document again so –

A The parcel number?

Q No, this – what do you call this? I know it's an aerial photograph –

MR. HAYWARD: Map. It's a map.

A Aerial photograph.

* * *

[75] make a record.)

MR. SPRADLEY: We'll have to get you to come out there.

MR. HAYWARD: Also, I think we need to go back and say that the aerial map was in 1997, not 1999. So what it shows, an aerial photo would only show what was in February – or whatever – of 1997.

MR. SPRADLEY: Right.

MR. HAYWARD: Not 1999.

MR. SPRADLEY: Okay. Right.

MR. HAYWARD: So what's there, we don't know.

MR. SPRADLEY: Right, so it doesn't means there's any trees now, and the trees may show even more if you took an aerial photograph today.

MR. HAYWARD: I don't know.

MR. SPRADLEY: Okay.

BY MR. SPRADLEY:

Q And do you know – do you have any idea today if this fourth acre – I'm calling it the fourth acre, but it's the acre which is closest to the Bellamy – County Road 328. Do you have any idea today as far as the cleared land that the cemetery takes – actually the cleared land that the cemetery actually takes, if it's a half an acre – I know you [76] say four acres, but do you have any idea exactly –

A I have no earthly idea. No, sir, I do not.

MR. SPRADLEY: Can we have one minute, please?

(RECESS TAKEN.)

MR. SPRADLEY: I just have a couple more questions.

BY MR. SPRADLEY:

Q First of all, the Harmony Baptist Church that was organized by Jimmy Spradley over here got permission to start using the Campbell reunion building on December – the first week in December of 1996. And from that date until now has the Harmony Baptist Church, have they ever filed for any kind of an exemption?

A No.

Q For the building or for the land?

A No.

Q Okay. The four acres that is part of the tax certificate, 13.00 –

MR. HAYWARD: Tax number, the tax assessor's number.

Q Tax assessment number, the four acres described in 13.001 tax assessment number, those four – your determination that those four acres should be [77] set aside for a cemetery is solely based upon the legal description that's been provided in the deed that we talked about today, where it says four acres reserved; is that correct?

A Yes.

Q And there's no other reason?

A No.

Q Is that correct?

A That's correct.

Q Okay. And as far as – generally speaking, as far as getting an exemption for – a charitable exemption for property in general, does the property have to be exclusively used for religious purposes?

A I can't answer yes or no to that.

Q Okay. All right.

A I might be right, but I can't answer yes or no.

MR. SPRADLEY: Okay. That's all the questions I have, and opposing counsel may have some questions for you.

MR. CRONIN: I don't have any questions.

MR. SPRADLEY: Can your office accommodate us and make us some copies of exhibits?

THE WITNESS: Yes, sir, but I'm going to send you a bill now for all this copying.

* * *

MADISON COUNTY
FLORIDA CEMETERIES

BY

JOSEPH T. EICHELBERGER

Privately published by

Joseph T. Burval
1995 Parkwood Road
Charleston, West Virginia 25314

1990

* * *

LITTLE BROWN CHURCH CEMETERY/CAMPBELL'S CHURCH CEMETERY

LITTLE BROWN CHURCH CEMETERY

ALSO KNOWN AS CAMPBELL'S CHURCH CEMETERY?

LOCATED 7.1 MILES SOUTH OF I-10 ON COUNTY ROAD 150, ON THE NORTHWEST CORNER OF THE INTERSECTION OF 150 AND A GRADED DIRT ROAD.

BEGIN AT WEST END, WORK EAST:

WILLIE B./GOODMAN/BORN OCT 1, 1901/DIED/AUG 26, 1905/A LITTLE BUD OF LOVE/TO BLOOM WITH GOD/ABOVE.///[ON BACK:] SINCE GOD HAS SEEN/ IT BEST TO TAKE OUR/DARLING BABE TO REST,/WE WILL LOVE AN WOS-/HIP THERIN[?] OUR/DARLING FACE TO SEE.

FANNIE KEMP SHE/WAS BORNED JUNE 1872/MARRIED AUGUST 30, 1888/DIED NOV ??, 1900 [BROKEN CONCRETE MONUMENT. DATA ARE SCRATCHED IN.] [IN 1989, THIS MONUMENT IS DOWN AND IS UNREADABLE.]

INFANT OF/HARVEY LOIS [HARVE & LOIS?] REAMS [DATA ARE ON CONCETE PILLOW ATOP CONCRETE SLAB.]

BERNICE O. ANDREWS/JAN 14, 1918 [CHILD'S GRAVE. GRANITE SLAB.]

ANDREWS

GEORGE PERRY	PEARL CAMPBELL
ANDREWS	ANDREWS
SEPT 14, 1883	OCT 22, 1886
OCT 12, 1957	JAN 13, 1947
GRANITE SLAB	GRANITE SLAB

#/HARVEY LEE ANDREWS/F1 US NAVY/WORLD WAR II/OCT 19 1920 JAN 11 1987 LOT ENCLOSED BY IRON FENCE:

NANCY J. RUSSELL/WIFE OF/RICHARD M. WHITE/ DAUGHTER OF NATHAN L. & LOUISA C./RUSSELL/ BORN/DEC 10, 1841/DIED/DEC 20, 1907/SHE'S GONE TO WORLDS ABOVE/WHERE SAINTS AND ANGELS MEET./TO RECEIVE OUR SAVIOR'S LOVE/AND WORSHIP AT HIS FEET [FOOTSTONE:] NJRW

[BROKEN CONCRETE STONE. VERY DIFFICULT TO READ.] LOUISA C. WAMEERS[?]/WIFE OF NATHAN/ RUSSELL BORN SEPT/13, 1824/DIED DEC 31, 1897/ DEAR MOTHER, . . . [LONG INSCRIPTION. CANNOT READ THE REST.] [IN 1989 THIS MONUMENT IS DOWN AND IS UNREADABLE.]

END OF FENCED AREA

BE_/CA_FE_LL [CAMPBELL?/WAS BORN/FEB 11 18?5 [1865?] DIED OCT 24[?] 1866

NEXT ROW:

BROKEN CONCRETE MONUMENT. INFANT OR SMALL CHILD. VIRTUALLY UNREADABLE. APPEARS TO BE FOR A CAMPBELL.

SON//EARL CAMPBELL/OCT 26, 1908/JAN 25, 1937

MOTHER/MAMIE J. CAMPBELL/NOV 29, 1887/APRIL 2, 1974

FATHER/CARAWAY/CAMPBELL/OCT 21, 1882/DEC 16, 1932

GRAVE MARKED BY FIELD STONE AND SOME ARTIFICIAL FLOWERS. PROBABLY IS THAT OF A CHILD.

MOTHER/FLOYD C. ANDREWS/JAN 19, 1881/APRIL 7, 1959

WINNIE SPRADLEY/CAMPBELL/JUNE 18, 1858/SEPT 25, 1916 [CONCRETE SLAB.]

ALLEN DENNETT/CAMPBELL/DEC 17, 1854/JULY 2, 1916 [CONCRETE SLAB.]

BUDDY/SON OF/A.D. & W.J./CAMPBELL/BORN/OCT 14, 1899/DIED/JAN 14, 1901/DARLING, WE MISS THEE. [CONCRETE SLAB.]

FENCED ENCLOSURE, SINGLE GRAVE MARKED BY STELE: MASONIC EMBLEM/JAMES R./CAMPBELL/ BORN OCT 9, 1834/DIED JUNE 24, 1901/THROUGH THE/ LORD'S UNBOUNDED/LOVE/WE'LL MEET AGAIN/IN REALMS ABOVE [FOOTSTONE:] J.R.C.

INFANT OF/JOHN & PEARL/CAMPBELL/BORN & DIED/AUG 12, 1918

LULU GERTRUDE/CAMPBELL/WAS BORN MAY/3RD 1897/DEPARTED THIS LIFE/10/OCT 1900/THE PLACE

IS VACANT IN OUR HOME/WHICH NEVER CAN/BE FILLED [CONCRETE MONUMENT. DATA ARE SCRATCHED IN.] [NEARLY UNREADABLE IN 1989.]

INFANT SON OF/MR. – MRS. J.L. CRUCE/MAY 14, 1947

SOUTH END:

DADDY/W.J. SPRADLEY, SR./NOV 17, 1893/JAN 27, 1960 [ALSO:] #/WILLIAM J. SPRADLEY SR/FLORIDA/ PVT 8 REGT REPL DRAFT/WORLD WAR I/NOV 17 1891/JAN 27 1960 [THERE IS ALSO A BRONZE WORLD WAR I MEDALLION STUCK IN THE GROUND.]

MOTHER/JENNIE V. SPRADLEY/MAR 28, 1899/JAN 13, 1942

IDA E. PORTER/SPRADLEY/SEPT 22, 1868/JAN 13, 1949

MASONIC EMBLEM/JAMES B./SPRADLEY/JULY 27, 1851/MAR 2, 1891/OUR DEAR ONE HAS GONE/TO REST BUT WE SHALL/MEET AGAIN IN THE/HOME OF THE BLEST

JAMES W./SPRADLEY/BORN/JAN 26, 1890/DIED/JUNE 6, 1890

A.R. SPRADLEY/BORN SEPT 5, 1824/DIED/AUG 26, 1888/HE THAT OVERCOMETH/SHALL INHERIT ALL THINGS

GEORGEAN/SPRADLEY/BORN/JAN 11, 1826/DIED/ FEB 4, 1891/SHE HAS DONE WHAT/SHE COULD

[FANCY] WOODMEN OF THE WORLD MEMORIAL/ DILLARD/SPRADLEY/AUG 17, 1862/MAY 14, 1916/HE

DIED AS HE LIVED,/A CHRISTIAN//SPRADLEY [FOOTSTONE:] D.S.

BROKEN MONUMENT. BEST GUESS: MRS. [JAMES] B./ SPRADLEY[?]/BORN/JULY 27, 1851/DIED/MAR 2, 1891/ OUR DEAR IS GONE TO REST/BUT WE SHALL MEET AGAIN/IN THE HOME OF THE BLEST

SINGLE GRAVE ENCLOSED BY PICKET FENCE: MOTHER//SARAH JANE/EDENFIELD/1834-1929/ GONE BUT NOT FORGOTTEN

NORTH END

ALEXANDER/CAMPBELL/BORN/JAN 20, 1826/DIED AUG 10, 1905/TIS NOT THE WHOLE OF/LIFE TO LIVE,/NOR ALL OF DEATH TO DIE.

MARGARET ANN/WIFE OF/A.N. CAMPBELL/BORN/ OCT 1, 1832/DIED/APR 30, 1903/SHE'S GONE TO WORLDS ABOVE/WHERE SAINTS AND ANGELS MEET/TO REALIZE OUR SAVIOR'S LOVE/AND WORSHIP AT HIS FEET.

SOUTH END

ERNEST ARLIE CAMPBELL/DEC 20, 1930/MAY 8, 1933//[ON FOOT OF GRANITE SLAB:] SON OF DURWARD R. AND/PEARLIE K. CAMPBELL

DURWARD R. CAMPBELL, SR.
JAN 1 MASONIC EMBLEM AUG 1
1904 1974

GONE BUT NOT FORGOTTEN
[GRANITE SLAB.]

MASONIC EMBLEM/W. ASA CAMPBELL/FEB 6, 1878/ AUG 8, 1923

BELOVED MOTHER/LOUVENIA E./CAMPBELL/1885 - 1957

#/ASA EDWARD/CAMPBELL/FLORIDA/S1/US COAST GUARD/RES/WORLD WAR II/OCT 19 1923/FEBRUARY 23 1948

#/DENNETT A. CAMPBELL/FLORIDA/TEC5 87 ARMD FA BN/WORLD WAR II/APRIL 13 1919 JULY 15 1958 [BOTTOM OF THE STONE IS BURIED IN 1989.]

SAMUEL/JAMES/CO. K/48 ILL INF [PROBABLY C.S.A.]

NORTH END

HENRY H./FLETCHER/BORN/MAR 2, 1816/DIED/FEB 16, 1902/GONE, BUT NOT FORGOTTEN

BROKEN CONCRETE HEADSTONE, CONCRETE FOOT-STONE APPROXIMATELY 6' APART. THIS IS PROBABLY A CHILD'S GRAVE, BUT MAY BE THAT OF AN ADULT.

INFANT SON OF/THOMAS AND NINA/CAMPBELL/ MARCH 1935

CAMPBELL

NINA H.	JOHN THOMAS
NOV 13, 1894	JUNE 1, 1879
JAN 1, 1986	MARCH 28, 1937
	[AT FEET:]
MOTHER	FATHER

JOHN THOMAS/CAMPBELL/JAN 25, 1928/APR 12, 1989/REST IN PEACE

END OF CEMETERY

RECORDED 18 APRIL 1985

CHECKED 11 SEPTEMBER 1989

CAMPBELL FAMILY CEMETERY

LOCATED 10.7 MILES SOUTH OF I-10 ON COUNTY ROAD 50. CAN ALSO BE REACHED BY GOING 1.7 MILES NORTHEAST ON COUNTY ROAD 150 FROM US-27. TAKE DIRT ROAD WEST THROUGH WOODS. GO .15 MILES. CEMETERY IS ON RIGHT. THE CEMETERY HAS BEEN CLEARED AND FENCED SINCE 1985. [STONE HAS BEEN RESET BY 1989.]

ELIZABETH/CAMPBELL/BORN JULY 19, 1809/DIED/ SEPT 26, 1883/SHE WAS TOO GOOD, TOO GENTLE,/ AND FAIR/TO DWELL IN THIS COLD WORLD OF CARE. [STONE DOWN] [FOOTSTONE:] E.C.

NEAL CAMPBELL/BORN/NOV 3, 1802/DEC'D MAR 15, 1875/OUR FATHER HAS GONE TO/A MANSION OF REST, TO THE GLORIOUS LAND/THE DEITY BLEST.

JULIA/WIFE OF/N. CAMPBELL/APR 7, 1854/SEPT 6, 1879/GONE BUT NOT FORGOTTEN. [MONUMENT HAS BEEN BROKEN BY 1989.]

LULA ALLINE/DAUGHTER OF/N. & J./CAMPBELL/ AUG 20, 1879/OCT 11, 1882/SLEEP ON SWEET/BABE AND TAKE THY/REST. GOD CALLED/THEE HOME HE/THOUGHT IT BEST

END OF CEMETERY

DATA RECORDED 23 APRIL 1985

CHECKED 11 SEPTEMBER 1989

FLORIDA FIRST NATIONAL BANK
At Madison

Madison, Florida
December 29, 1970

Pay to the Order of Check No. 349

TEENIE VEE DAVIS and WILBURN DAVIS, her husband; IDA VEE LAMBERTS and BLACKIE LAMBERTS, her husband; JAMES E. SPRADLEY and BEVERLY SPRADLEY, his wife; ROBERT D. SPRADLEY, GWENDOLYN VARELA and F. L. VARELA, her husband; JUANITA GARCIA and WILLIAM S. GARCIA, her husband; MARGIE HENDERSON and SAM E. HENDERSON, her husband; JACKIE O'QUINN and CHARLIE O'QUINN, her husband; CAPTAIN W. J. SPRADLEY and JANIE SPRADLEY, his wife:

$600.00

SIX HUNDRED AND NO/100----------DOLLARS

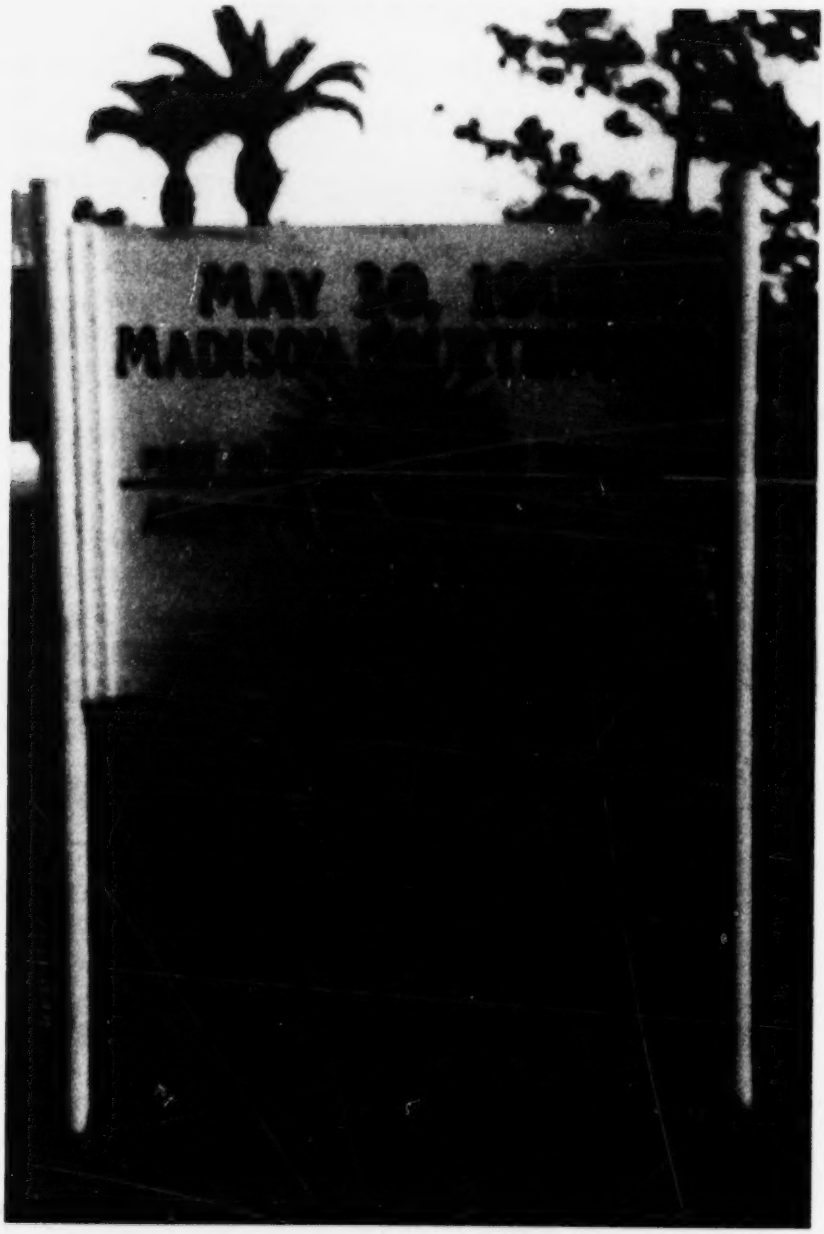
SRD # 111.1

/s/ Dale M. Leslie
Registry of the Court
Clerk of the Circuit Court
Madison County, Florida

00 0037 6

/s/ W.J. Spradley Jamie Spradley

May 30, 1998
Madison County Courthouse



IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT, IN AND FOR MADISON COUNTY, FLORIDA

CASE NO.: 98-010-CA

EXCERPT

W.J. SPRADLEY, JR., EDWARD CAMPBELL and VIRGINIA CAMPBELL CARDIN as Representatives of the SPRADLEY-CAMPBELL REUNION MEMORIAL, and WILLIAM J. SPRADLEY, III,

Plaintiffs/Counter-Defendants,

vs.

OLD HARMONY BAPTIST CHURCH, BOARD OF TRUSTEES OF THE OLD HARMONY BAPTIST CHURCH, WILLIAM BAILEY, JAMES EMORY SPRADLEY, WAYNE HEATHERLY and RODNEY WATTS,

Defendants/Counter-Plaintiffs,

vs.

WILLIAM E. REAMS, as PERSONAL REPRESENTATIVE DE BONIS NON ADMINISTRATIS OF THE ESTATE OF RICHARD SAMPSON PORTER, DECEASED,

Intervenor.

_____/

Proceedings had and taken before Honorable R.A. GREEN, Circuit Court Judge, at the Columbia County Courthouse, 145 North Hernando Street, Room 210, Lake

City, Florida, on Friday, November 3, 2000 at or about 9:00 a.m.

[2] APPEARANCES:

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BY: James R. Zant, Esquire,
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DAVE COLLINS, P.A.
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(850) 997-5100
BY: David W. Collins, Esquire,
Counsel for Defendant Bailey.

ALSO PRESENT:

James Alston
Albert Alston
Donald Bailey
Margaret Bailey
Glen Derickson
James Reams

[3] THEREUPON, the following proceedings were had:

* * * * * * * * * * * * * * * *

THE COURT: Do I have the authority to order all of you all to go to the Billy Graham crusade? I'm dead serious. Do I have that power? Are these parties still before me?

MR. COLLINS: I've got Gator tickets, Judge.

THE COURT: Do I have the authority to order all of these family members, and I'm talking about the Spradleys, the Baileys and the people that are involved in the case, do I have the authority to order them to go to the Billy Graham revival for the rest of this week?

MR. COLLINS: Under your equitable powers, I would argue that you can apportion cost or sanctions any way you want. And I would, I would say that that would be legal.

And I'm not just saying that – I think you've got it, yes, sir. The only thing short of it would be a –

THE COURT: So I have the authority in lieu of dollar sanctions to make than an [4] order?

MR. COLLINS: I think you could, Judge.

THE COURT: I'll give you some time to think about it. Let's take five.

(A brief recess taken.)

MR. BULLOCK: Judge, if I may, on that last round of the – I have not had a whole lot to say, and of course I wasn't the attorney of record at that point in time, but one thing I would like for the Court to consider on that issue, which I did find in the pleadings when I got involved.

And that is that the, when that affidavit was filed and the church minutes were produced, the church minutes were produced as corroborating evidence that Mr. Spradley had been seen in camouflaged fatigue and carrying a gun.

And the purpose for all that being done at that point in time was obviously when you step back and look at the pleadings, was an attempt to taint this side of the case by painting an image of the other side; that the lawyer's out there in fatigues, we've got guns, we've got evidence, we've got [5] photographs.

From this side of the table, all they said was well, produce it for us. And as the Court noted, that set out a wild goose chase. These are not sanctions that are being asked against the lawyers, they're sanctions being asked against the party.

And so with all due respect to the two counsel of record, I think they probably did what was appropriate, and they said whatever photographs we've got we've produced.

What rises this to the level of sanctions is that affidavit that was filed, and that was filed by the party representative. When that affidavit surfaced and says well, here it is and here's the church minutes, and we've got you on photograph too, that then, with all due respect, put this party in the position that said well, if that's going to be evidence, how about producing it. And they said go here, go here, go here, and it just put them on that chase. They had to file motions to compel. So under those circumstances it does rise a little bit higher to the level.

[6] And the last comment I would make, I think the Court's comment on the Billy Graham thing would probably be appropriate, it's just a shame that we've got a church involved in the case to which we still have to go through stuff like that.

And I think the Court's already made that comment before, and I think we all think it's a shame that it has to be that way. To order something along those lines, the only down side of that would be probably from the appellate level, probably look at that and say well there is a church and state issue; if the Court orders people to do something along church lines, that would probably run a foul of that.

I think the idea is well respected and probably something that everybody should do anyway without an order of the Court. But I think it would run into some appellate issue along those lines. That's my two cents worth.

* * * * * * * * * * * * * * *

(Thereupon, the hearing was adjourned at 10:42 a.m.)

[7] COURT CERTIFICATE WITH ACKNOWLEDGMENT

STATE OF FLORIDA)
COUNTY OF COLUMBIA)

I, DEBORAH M. HOLLOWAY, a Shorthand Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true record.

Dated this 12th day of November 2001.

/s/ Deborah M. Holloway
Deborah M. Holloway
Shorthand Reporter

[SEAL] OFFICAL NOTARY SEAL
DEBORA M. HOLLOWAY

COMMISSION NUMBER
DD001900

MY COMMISSION EXPIRES
MARCH 2005

Supreme Court, U.S.
FILED
FEB 1 2002
CLERK

No. 01-944

In The

Supreme Court of the United States

W.J. SPRADLEY Jr., et al.,

Petitioners,

vs.

OLD HARMONY BAPTIST CHURCH, et al.,

Respondents.

On Petition For Writ Of Certiorari To The District Court Of Appeal, First District, State Of Florida

RESPONDENTS' BRIEF IN OPPOSITION

DAVID W. COLLINS, ESQUIRE
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Lawyer for the Respondents
Counsel of Record

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

1718

PARTIES TO THE PROCEEDING

The Respondents accepts the Petitioners' recitation of Parties to the proceeding.

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RESPONDENTS' BRIEF IN OPPOSITION

This Court should deny the Petition for Writ of Certiorari, which seeks review of the Florida District Court of Appeal, First District's per curiam affirmance without opinion of the unpublished trial Court's order of August 13, 2001.

RESTATEMENT OF THE CASE

A. Nature of the Lawsuit and Procedural History.

This case began when the Petitioners filed an injunction to remove the Respondents from a parcel of land that the Petitioners claimed was theirs and the Respondents also claimed was theirs. The Petitioners are comprised of a number of people related by blood who claimed the property belonged to their kin, primarily, W.J. Spradley Jr. and others who comprise the Campbell Family reunion. Their claim is derived from the assertion that Mr. Spradley inherited the property from his family and that the cemetery located on it is a family cemetery. The Respondents are comprised of surviving members of a Church that once stood on said property and the lineal descendants of members of said Church. It is noteworthy that one of the respondents, who shares the position of the other respondents, is James Emory Spradley, the brother of W.J. Spradley Jr. The Respondents' claim to the property is that the property always belonged to the Church, known as Harmony Baptist Church and commonly referred to as "Old Harmony" Baptist Church.

Such ownership claim is based on the title to the property, which is comprised of the deeds of record to the property in dispute, and the recently discovered bond for title which surfaced during the litigation and was of significant evidentiary value in the Court's ruling from which the instant petition resulted.

The aforesaid opposing claims to the disputed land led to a "quiet title" lawsuit being filed in Florida Circuit Court. The parcel of land is approximately two acres in size. The dispute/lawsuit was fueled by the fact that the deed for the disputed property claimed by each party was not clear in stating that the two acres in dispute belonged to the Church, but merely omitted four acres from being transferred by the deed. However, on the face of the deed, the exact four acres were not particularly described. The litigation was quickly ended when a "bond for title" emerged which did describe the four acres in dispute and cleared up the ambiguity of the disputed deed. Said "bond for title" had been demanded by the respondents, much earlier in the lawsuit, from the petitioners (who had it in their possession all along). It was not until the Petitioners risked losing the entire 156 acres conveyed in the deed, because of its patent ambiguity, that the "bond for title" emerged. At the hearing held by Judge R.A. Green on the parties' respective motions regarding the title to the land, the Court heard arguments from counsel for each party. Said hearing afforded all parties the opportunity to argue the law and facts, and to advance their respective positions. As such, the evidence of the deed to the disputed land, the bond for title to the disputed land and other pertinent issues concerning the title were discussed and argued.

Once the Court determined that the disputed property (two acres of such) belonged to the Harmony Baptist Church, it went about establishing a deed for the Church (which was presumably lost). The Court, recognizing that the members of the "Old" Harmony Baptist Church were not necessarily members of the Harmony Baptist Church, held an open hearing to identify if members of the Church as it existed in 1947 (which was the last time a continuous congregation met there) existed. Once again, it is noteworthy that members from both parties to the lawsuit testified at such hearing to qualify as a "trustee" to the Church, which would be someone who could make ownership decisions regarding the Church property. William Bailey was the only person who could be identified as such a person. W.J. Spradley Jr. testified at said hearing but his testimony did not establish him as a member of the 1947 Harmony Baptist Church.

Finally, the Court held another hearing to establish the legal description for the establishment of the new deed for the two-acre parcel for the Church. The parties agreed on the use of one surveyor, Walton Poppell. After said hearing, the new legal description was established, and except for hearings regarding sanctions and costs as a result of the long and emotional litigation, the case at the trial level was over.

B. Restatement of the Appellate History of the Case.

It should be noted that just prior to, or at approximately the same time the instant petition was filed in this case, the same Petitioners filed and summarily dismissed

a petition for a writ of certiorari with the Florida Supreme Court.

REASONS FOR DENYING THE WRIT

I

JURISDICTION

The Petitioners' claims do not meet the persuasive criteria of considerations dictated by Rule 10 of the Rules of the Supreme Court of the United States. The only considerations that come close are 10(b) and 10(c). This is only because the petitioners have tried to mask their complaints of erroneous factual findings and misapplication of governing law (which are things this Court *will not usually consider),* as federal questions. However, such disguised as federal questions still do not meet the criteria for consideration as a conflict with another state court of last resort, or of a conflict with a U.S. Court of appeals or an important question of federal law which is in conflict with the U.S. Supreme Court.

II

THE PETITIONERS' DUE PROCESS RIGHTS HAVE NOT BEEN VIOLATED

To understand whether or not a federal question of due process not only arose, but was violated, you need to examine the actual decision-making of the Court and how it was arrived at. The Petitioners have improperly misstated this question as simply for the Court to decide,

"which Party had the superior claim of title to the disputed land." This is simply putting the cart before the horse. A due process analysis must start with how the decision of who had title was reached, whether the law was followed in reaching said decision, and whether all parties of concern had a right to be heard. To fully understand the law and facts the Court was confronted with when making its decision, consider the following:

III

THE COURT'S DECISION, OTHER FACTORS CONSIDERED (or conveniently omitted by the Petitioners!)

a. Misstatement of Facts.

Petitioners state on page 5, paragraph 1 of their petition that by the 1885 bond (L8), R.S. Porter agreed to sell J.B. Spradley 160 acres of land. The bond clearly states that Porter is agreeing to sell Spradley only 156 acres of land.

In petitioner's petition on Page 5, paragraph 3, page 6, paragraphs 1 and 4, and page 6, paragraph 1, Petitioner states that the instruments convey 160 acres of land when in fact they convey only 156 acres of land.

Petitioners further state on page 5, paragraph 2 and 3 of their petition that the 1889 deed (L4-L6) conveys 160 acres. This deed conveys only 156 acres of land. The same is with the 1952 deed (L7) mentioned on page 5, in paragraph 4 of their petition.

After Petitioners forcibly evicted the congregation of Old Harmony Baptist Church, Petitioners and Respondents sued one another to quiet title to four acres of land upon which the church was situated. The four acres had originally been excepted in a deed made in 1889 by which a man named R.S. Porter conveyed 156 acres of land to a man named J.B. Spradley. Petitioners and Respondents all agreed that description of the four acres excepted was patently ambiguous.

Throughout the lawsuit, the Petitioners had in their possession the original, unrecorded agreement between Porter and Spradley (a bond for title) upon which the conveyance of the 156 acres was to be made. Petitioners refused to disclose such when requested early on in the lawsuit by a proper discovery request. Instead, Petitioners disclosed the 1885 agreement attached to his motion for summary judgment. The disclosure was too late for the Respondents to react procedurally to the contents of the bond. However, such was of paramount importance in establishing the true intent of Porter and Spradley.

b. No Mutual Mistake of Intent Between Parties.

To derive the intent of the original parties to the disputed land the Court considered the 1885 bond for title, the 1889 deed and a 1901 deed by Porter to Madison County of one of the excepted acres. All three instruments, which were introduced as evidence by Petitioners, clearly show that the parties to the 1889 deed made no mistake in the description by which they agreed to the 156 acres. No adjudication on this issue is necessary.

c. Four Titles.

The bond also clearly shows that neither petitioners nor respondents have any interest in the four acres excepted in the 1889 deed, and that the four acres excepted is owned by persons or entities who were not parties to the action below. Harmony Baptist Church owns two acres, Madison County owns one acre, Porter's heirs own one acre and W.J. Spradley Jr. (one of the petitioners) owns 156 acres.

Title to the two-acre church lot mentioned in the bond is vested in the only surviving member of Harmony Baptist Church, to wit: William Bailey, which the Court decided pursuant to long established precedent. Title to unincorporated Baptist churches is vested in the congregation See *First Independent Missionary Baptist Church v. McMillan*, 153 So.2d 337 (Fla. 2d DCA 1963) or in their trustees under § 692.101(1), Fla. Stat. (1998).

d. Quieting Title.

On the basis of the bond for title and the two deeds, the trial court quieted title in the three above-mentioned non-parties by correcting the scrivener's error in the 1889 deed. It is not essential that the court has jurisdiction over a person in order to adjudicate that person's interest in the property. *McDaniel v. McElvy*, 91 Fla. 770, 108 So. 820 at 830 (Fla. 1926).

Where the parties have made an agreement, and the scrivener by mistake failed to express in apt words and terms, equity will reform the writing to make it conform

to the agreement previously entered into between the parties. *Jacobs v. Parodi*, 39 So. 833, 837 col 1 (Fla. 1905).

Under the doctrine of merger, the bond for title merges with the deed. *Stephan v. Brown*, 233 So.2d 140 (Fla. 2d DCA 1970): contract for sale becomes merged with deed.

Reforming the deed to conform to the intention of the parties as manifested by the 1885 bond quiets title in no way alters the agreement of the parties to the bond. The 1885 bond allows R.S. Porter and J.B. Spradley to speak for themselves in this quiet title action to correct the error obviously made by their scrivener in the 1889 deed. It is not necessary that they should be joined as interested parties. As the Florida Supreme Court ruled in 1939:

> "It is next contended by counsel for appellants that it appears upon the record that interested parties in the subject matter of the litigation were not served with process and should be made parties before a final decree was entered, and cite *Liverpool, London & Globe Inc. Co. v. City of Rockledge*, 97 Fla. 644, 121 So. 807; 53 C. J. 1006, et seq., and *Busby v. Littlefield*, 31 N. H. 193-188. The answer to this contention is that the bill of complaint is one to quiet title and confirm title in the plaintiffs below and it is not a suit to reform a deed because of *a mistake in the description of the lands conveyed*. If the bill of complaint was one of reformation because of a mistake, then the authorities, supra, cited by counsel for appellants, would be controlling. The lower court held that the suit was one to quiet title and our study of the proceedings in the lower court convinces us that there is no error in the conclusions so reached." (Emphasis

added) *Brooks v. Pryor*, 138 Fla. 498, 189 So. 675 at 677 (Fla. 1939).

If the 1885 bond for title were not available, the 1889 deed could not be reformed in a quiet title action. Since the mistake was in the identity of the land itself, the 1889 deed could not be reformed in a suit for reformation based on mutual mistake. *Holley v. May*, 75 So.2d 696, 698 col 1 (Fla. 1954). Petitioners only remedy *under Florida law* for a mutual mistake in the identity of the land is rescission of the deed *Langley v. Irons Land & Development Co.*, 114 So. 769, 771 col 2 (Fla. 1927). If the trial court finds that the bond for title is an indivisible contract, then the entire deed must be rescinded. *McDonald v. Sanders*, 137 So. 122, 126 (Fla. 1937).

Petitioners cannot make this quiet title action to correct a scrivener's error in the 1889 deed into an action to reform a deed for mutual mistake of the parties to the deed. Petitioners may not have realized it, but had the 1885 bond for title been of record, there would have been no ambiguity in the 1889 deed, and there would have been no controversy except with respect to the boundary line. Now that the bond has been disclosed, there is no title question.

The only alternative to continuing with the quiet title suit and quieting title in the non-parties would have been to dismiss the case, wasting countless hours of judicial and private effort.

e. Settling the Boundary Line.

As explained above, the bond for title resolves all the legal questions of title to the four acres without the

necessity of legal arguments. Harmony Baptist Church owns two acres, Madison County owns one acre and Porter's heirs own one acre. The only factual question presented is the location of the boundary line between Petitioners' 156 acres and the four acres excepted from the 1889 deed. This is not a federal question.

It is apparent that the basis of Petitioners' reasons for this Court granting a writ of certiorari is that the trial court settled the boundary line between the church and the Petitioners in a quiet title suit without notice that it was going to do so. While boundaries are not generally settled in actions at law and not in quiet title actions, a court of equity will take jurisdiction of such a dispute, "where equity jurisdiction is superinduced by the act *of the party defendant*". (Emphasis added) *Stark v. Frayer*, 67 So.2d 227 at 239 col 1 (Fla. 1953). In this case, Petitioners had evicted the Church without a writ of possession. In addition, Petitioners had withheld the bond for title during discovery in the quiet title action.

The court was correct in going forward to settle the boundary line. This is because once a court of equity takes jurisdiction it will adjudicate all matters germane and necessary to do justice between the parties. *Sanders v. Alford Bros. Co.*, 111 So. 278 at 279 (Fla. 1926)

f. Establishing A Lost Deed for the Church.

In addition to settling the boundary line dispute, the Court took the additional obvious step of completing the record of title by establishing the lost deed to the Church. The bond for title to convey 156 acres of land clearly shows that the Church already had title to its two-acre lot

from an unspecified source prior to the bond being executed. (R: Volume IV, 648, 649). Record of title to the Church lot can be assumed lost. A lost deed can be reestablished. *Griffin v. Fries*, 2 So. 266 (Fla. 1887). Thus, the church's title was established independent of reformation of the 1889 deed. Reformation of the mis-description affects only 158 acres – not 160 acres as Petitioners claim. Reformation affects only the 156 acres that Petitioners own, the one acre owned by Madison County, Florida, and the one acre owned by heirs of one of the deceased parties to the bond.

g. No Harm Demonstrated.

The Petitioners have not demonstrated how their interest has been adversely affected by the trial court's actions. Nor have they shown how a retrial of the issues presented here would change the outcome of this case. Florida Statute § 95.231 is not applicable to this case because none of the respondents are claiming against the 1889 deed. The church claims a title independent of the 1889 deed and Porter's heirs and Madison County claim under the 1889 deed, not against it. As Respondents pointed out in their brief to the state appeals court below, even the Petitioners cannot have a clear title to their 36 acres in the forty in which the four acres is located unless and until the scrivener's error is corrected.

IV

THERE HAS BEEN NO VIOLATION OF THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT IN THIS CASE

The record in this case of the testimony and evidence that was presented to the Court at every critical stage of its decision-making clearly establishes that there was no violation of the establishment clause. A better case could be made for the inscription of "IN GOD WE TRUST" on our currency.

Once title was quieted in the Harmony Baptist Church, vintage 1940's, William Bailey was appointed as trustee by the Court, as the sole surviving member, of said congregation to hold title for the Church. His selection was made after an evidentiary hearing at which time all parties were invited to give evidence and testimony. W.J. Spradley Jr. gave testimony for his consideration as a trustee at said hearing. The Petitioners have omitted the transcript of such hearing from their appendix. Instead they have focused on a completely benign and harmless suggestion by the Court, during a heated sanctions hearing, that the court was going to send us all to the Billy Graham crusade rather than impose dollar fines.

There is no evidence presented that an establishment clause violation occurred at any stage of the trial level proceeding.

V

CONCLUSION

The trial court went no further than to resolve the questions presented by the pleadings and Petitioners' own evidence. The First District Court of Appeals was correct in affirming the trial court without opinion. Certiorari should be denied.

Respondents should be awarded attorney's fees and costs under Rule 42.2 and Rule 43 for having to answer Petitioners' frivolous petition.

Respectfully submitted,

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(3)

No. 01-944

Supreme Court, U.S.
FILED
FEB 12 2002
CLERK

In The

Supreme Court of the United States

W.J. SPRADLEY, JR., EDWARD CAMPBELL and VIRGINIA CAMPBELL CARDIN as Representatives of the CAMPBELL REUNION MEMORIAL,

Petitioners,

vs.

OLD HARMONY BAPTIST CHURCH, BOARD OF TRUSTEES OF THE OLD HARMONY BAPTIST CHURCH, WILLIAM BAILEY, JAMES EMORY SPRADLEY, WAYNE HEATHERLY, RODNEY WATTS, WILLIAM E. REAMS as Personal Representative De Bonis Nonadministratis of the Estate of RICHARD SAMPSON PORTER (Intervenor),

Respondents.

On Petition For Writ Of Certiorari To The District Court Of Appeal First District, State Of Florida

REPLY BRIEF

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REPLY TO RESPONDENTS' OLD HARMONY BAPTIST CHURCH AND INTERVENOR'S BRIEF IN OPPOSITION TO PETITIONERS' PETITION FOR WRIT OF CERTIORARI.

The Respondents have requested this Court to ignore the undisputed record containing erroneous rulings of law and the First and Fourteenth Amendment violations to the U.S. Constitution. The record does not contain any factual issues. The Petitioners are not asking this Court to resolve any factual disputes. The record is unequivocal and undisputed that Judge R.A. Green, who was religiously motivated, blatantly violated the Petitioners' Fourteenth Amendment rights to the U.S. Constitution by reforming an 1889 deed without notice, pleadings, evidence, hearing or trial, on behalf of Harmony Baptist Church, a non-existent entity. Judge R.A. Green violated the Establishment Clause of the First Amendment to the U.S. Constitution by creating a non-existent deed and reforming an 1889 deed, and selecting a trustee solely based on an individual's baptism to lead the newly created church.

I. ARGUMENT.

A. RESPONDENTS' ARGUMENT THAT THE PETITIONERS' DUE PROCESS RIGHTS HAVE NOT BEEN VIOLATED IS NOT SUPPORTED BY THE RECORD.

The Respondents have incorrectly stated the Petitioners' position when Judge R.A. Green violated the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. A short recitation of the facts surrounding the motion for summary judgment proceedings is necessary to clarify this issue.

The Petitioners and Respondents filed pleadings requesting the trial court to quiet title for the disputed land. The determination of which party had the superior claim of title for the disputed land was the sole issue to be resolved by the court.

The Petitioners moved to dismiss the Respondents' suit for not deraigning a chain of title as required under Chapter 65.061(3), Florida Statutes (1999). App. 5a. The trial court denied the Petitioners' motion to dismiss and ordered the Petitioners to answer the Respondents' suit. The Petitioners countersued the Respondents for quiet title.

The parties did not file any pleadings requesting the trial court to reform an 1889 deed. The court lacked subject matter jurisdiction to reform an 1889 deed.

Respondent Old Harmony Baptist Church filed a motion for summary judgment against the Petitioners asserting that Petitioner W.J. Spradley, Jr., did not own the disputed land, conceded the church lacked standing, and alleged that R.S. Porter owned the disputed four acres.

Petitioners filed a motion for summary judgment against Respondent Old Harmony Baptist Church and argued that W.J. Spradley, Jr., owned the disputed land under the 1952 deed and acquired it through adverse possession before 1939. Additionally, Petitioners argued that the church lacked standing. App. 5a.

The Petitioners filed a motion for summary judgment against Respondent William Reams and argued his claim for the disputed land under the 1889 deed recorded in 1906 was time barred under Chapter 95.231(2), Florida Statutes (1999). (volume III, pages 546-587). The trial court granted the Petitioners' motion for summary judgment against Respondents Old Harmony Baptist Church and Intervenor and granted Respondent Old Harmony Baptist Church's motion for summary judgment against the Petitioners. App. 1a, 4a, 6a.

The motion for summary judgment hearing was a non-evidentiary hearing in which the attorneys made oral arguments. Evidence was not introduced by any party. Witnesses did not testify during the motion for summary judgment hearing on December 9, 1999. (R: volume VIII, pages 1413-70).

After the December 9, 1999 motion hearing, Judge R.A. Green granted all motions for summary judgment and reformed the 1889 deed. Judge R.A. Green informed the parties on December 17, 1999 of his decision to cancel the trial that was scheduled to resolve the quiet title issue and of his intention to determine the former trustees of Harmony Baptist Church.

Judge R.A. Green created a non-existent deed by relying upon the 1885 unrecorded bond between R.S. Porter and J.B. Spradley. The trial court's reformation of the 1889 deed was time barred under Chapter 95.231(2), Florida Statutes (1999). Judge R.A. Green reformed the 1889 deed without notice, pleadings, hearing, trial, or testimony from the witnesses who signed the 1885 bond and 1889 deed.[1] The Petitioners timely objected that Judge R.A. Green violated the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution when he created a non-existent deed and reformed the 1889 deed between December 10, 1999 and December 17, 1999. App. 11a, 12a. The Petitioners have not argued that the trial court violated the Petitioners' due process rights at any other time during the lower court proceedings.

From the date Judge R.A. Green was assigned this case, he only convened evidentiary hearings on December 20, 1999 and July 14, 2000. During the December 20, 1999 hearing, the trial court attempted to determine the existence of Harmony Baptist Church members. The trial court partitioned the two acres titled in Harmony Baptist Church during the July 14, 2000 hearing. These two hearings were not associated with the court's earlier ruling reforming the 1889 deed without a trial. (R: volume IX, pages 1502-83; volume VI, pages 1069-1139).

---

[1] Respondents stated in their opposition brief the 1885 unrecorded bond was requested in discovery. The bond was never requested by the Respondents. The Respondents made the same argument unsuccessfully in the trial court and requested sanctions which were denied by the court. Petition for Writ of Certiorari, App. 10a, 12a.

The Respondents' argument that Chapter 95.231(2), Florida Statutes (1999), is not applicable when the trial court reformed the 1889 deed is an erroneous interpretation of Florida jurisprudence.[2] The Petitioners filed a motion for summary judgment against the Respondent William Reams arguing the 1998 suit challenging the 1889 deed, recorded in 1906, was time barred. Harmony Baptist Church, R.S. Porter, and Madison County Board of Public Instruction had until 1926 to challenge the 1889 deed conveying 160 acres to J.B. Spradley. Judge R.A. Green granted the Petitioners' motion for summary judgment against the Respondent William Reams under Chapter 95.231(2), Florida Statutes (1999).

The Petitioners suffered irreparable harm when the trial court created a non-existent deed, reformed the 1889 deed, and seized the Petitioners' land without a trial. If the trial court had granted the Petitioners an opportunity to be heard, they would have been able to present evidence and argue several defenses to include the statute of limitations under Chapter 95.231(2), Florida Statutes (1999).

In conclusion, the Petitioners were denied their due process rights when Judge R.A. Green reformed an 1889 deed without notice, evidence, or a trial in violation of the Fourteenth Amendment to the U.S. Constitution.

II. ARGUMENT.

A. RESPONDENTS' ARGUMENT THAT THE TRIAL COURT DID NOT VIOLATE THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT IS NOT SUPPORTED BY THE RECORD.

The record supports the conclusion that the result in this case was governed by the trial court's impermissible

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[2] *Inglis v. First Union National Bank*, 797 So.2d 26 (Fla. 1st DCA 2001), *Rigby v. Liles*, 505 So.2d 598 (Fla. 1st DCA 1987) App. 4a. These cases held that Chapter 95.231 (2), Florida Statutes (1999), bars any court from reforming a deed after it has been recorded in excess of twenty years.

interjection of religion in these proceedings which violated the Establishment Clause of the First Amendment. The trial court consistently refused to follow the Florida Rules of Civil Procedure, Rule 1.510(c) (1999), and Chapter 65.061(3), Florida Statutes (1999). Judge R.A. Green provided preferential treatment and allowed the Respondent Old Harmony Baptist Church to remain in the quiet title suit when it lacked standing. App. 1a, 6a.

During the December 20, 1999 evidentiary hearing, Judge R.A. Green shared his religious background with the parties by stating the following:

> THE COURT: And I'd like to make an announcement for the record. I was raised in the First Baptist Church of Starke. I was baptized there. I was a deacon in the First Baptist Church of Gainesville. Both were – and I assume still are – members at the time I was of the Southern Baptist Convention. I mention that only to say to these folks, that when you're talking Baptist religion and the denominational rulings of the church, I have some personal dealings of those. I'm now attending and a member of the First United Methodist Church of Starke. App. 34a.

During the December 20, 1999 evidentiary hearing, the trial court called W.J. Spradley, Jr., as the court's witness and asked the below questions. App. 24a-27a.

> EXAMINATION BY THE COURT:
>
> Q Can you give us the benefit of your information, if you have any, about that congregation? Specifically, were you a member of that congregation?
>
> A I was.
>
> Q Were you baptized in that church?
>
> A I don't recall being baptized because I was about ten or twelve years of age, so it's hard for me remember, but I was a member of the regulars.
>
> Q Where were you baptized, sir?

A I was baptized in Oklahoma.

Q And did you transfer here from Oklahoma?

A Well, not yet, no. Not to a local church, no.

Q I see. Was your baptism in Oklahoma before you were ten or after –

A After I was in the military.

Q And you began to attend there when you were ten or thereabouts, but you were later baptized in Oklahoma, I gather when you were in the service.

A Yes.

Q How old were you when you were baptized?

A I was about I believe – twenty-seven years old.

The court called William Bailey as its next witness and asked the following questions. App. 28a-32a.

EXAMINATION BY THE COURT:

Q Mr. Bailey, were you at any time a member or did you attend the church called Old Harmony one?

A Yes sir.

Q What was your connection, if any, with the church?

A Well, I was just a member, going to church, back in about '38,'39, somewhere around that, but I went there ever since I was – rightly before I was born, if you want to call it with my mother taking me.

Q All right. Now, when and where were you baptized?

A Old Harmony Church in Alligator Creek.

Q When was that?

A Well, that was about – I was about I guess a ten or twelve-year-old. I guess about '38, somewhere around there, '38 or '39.

Q Okay. What did you do after you – let me ask it a different way. When the church quit meeting there, where did you start attending?

A I didn't attend anymore.

Q No other church?

A No, I didn't go. I left and went down to Miami, Fort Lauderdale.

Q Did you move your letter to Miami?

A I moved there but I didn't go in no church down there.

Q You did not move your letter to Miami?

A No, sir, I did not move anything. It all stayed just like it was.

Q Where do you attend now?

A Where do I attend now? Old Harmony Church, the one that was tore down. They have a tent out there.

Q Where did you attend from the time you came back from Miami till you started attending out there?

A Well, I didn't go at the time when I first come back.

Q Is it accurate that your letter has never been moved from Old Harmony one?

A It's never been moved.

CROSS EXAMINATION BY MR. COLLINS:

Q And could you describe how that baptism took place in your own words for the Court, how you were baptized?

A Well, you just went and you walked in and they said a little prayer and turned you over backwards and held their hand over your mouth and nose to keep the water from going in, and stuck your head under and raised your back up.

The Respondents' counsel, Mr. Collins, observed during the December 20, 1999 hearing that the trial court was

attempting to recreate the 1945 Harmony Baptist Church congregation, and the below exchange occurred between the court and Mr. Collins. App. 35a.

> MR. COLLINS: Your Honor, may I ask a question, just so I know? I think I know where the Court is headed. I think –
>
> THE COURT: Where do you think the Court is headed?
>
> MR. COLLINS: We're trying to recreate a congregation that existed at that time that had trustees so we can vest title in them?
>
> THE COURT: No, no. We're probably trying to find out who was there so I can appoint some trustees.

Judge R.A. Green revealed his religious motivation during the May 5, 2000 motion hearing, asserting he would never permit abandoned church property to be adversely possessed, a motive which explains his rationale in denying Petitioner W.J. Spradley, Jr.'s claims for adverse possession. App. 36a, 37a.

The trial court's July 27, 2000 order violated the First Amendment to the U.S. Constitution prohibition of excessive entanglement when it appointed a trustee of a non-existent church.[3] During the December 20, 1999 evidentiary hearing, the trial court was informed that Harmony Baptist Church did not have any trustees, and the congregation had not been in existence since 1945.[4] App. 21a, 7a.

The court appointed William Bailey as a trustee solely because he had been a baptized member of the

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[3] On December 20, 1999, counsel for the parties cautioned the trial court several times that he was violating the Establishment Clause by becoming excessively involved in the affairs of a non existent Baptist church. App. 19a, 20a, 22a.

[4] The trial court incorrectly applied Chapter 692.101, Florida Statutes (1999), when Harmony Baptist Church never held title to the disputed land before 1986. App. 7a, 8a.

disbanded Harmony Baptist Church. App. 25a, 29a, Petition for Writ of Certiorari, App. 6a. Judge R.A. Green did not appoint William Bailey as a trustee for the newly created church until he signed his July 27, 2000 Final Judgment. Petition for Writ of Certiorari, App. 6a.

The Petitioners timely objected to the trial court appointing William Bailey as a trustee based on baptism by appealing the July 27, 2000 Final Judgment. The Petitioners argued in their brief to the Florida District Court of Appeal, First District, that the trial court breached the First Amendment to the U.S. Constitution by violating the Establishment Clause through the creation of a trusteeship and selection of a trustee based on baptism.

During the November 3, 2000 sanctions hearing, Judge R.A. Green engaged in the following colloquy with Mr. Collins:

> THE COURT: Do I have the authority to order all of you all to go to the Billy Graham crusade? I'm dead serious. Do I have that power? Are these parties still before me?
>
> MR. COLLINS: I've got Gator tickets, Judge.
>
> THE COURT: Do I have the authority to order all of these family members, and I'm talking about the Spradleys, the Baileys and the people that are involved in the case, do I have the authority to order them to go to the Billy Graham revival for the rest of this week?
>
> MR. COLLINS: Under your equitable powers, I would argue that you can apportion cost or sanctions any way you want. And I would, I would say that that would be legal. And I'm not just saying that – I think you've got it, yes, sir. The only thing short of it would be a –
>
> THE COURT: So I have the authority in lieu of dollar sanctions to make than an order?
>
> MR. COLLINS: I think you could, Judge.
>
> THE COURT: I'll give you some time to think about it. Let's take five.

After the parties returned from a brief recess, the Petitioners' counsel informed Judge R.A. Green that his intention to order the parties to attend the Billy Graham crusade was impermissible under the Establishment Clause of the First Amendment to the U.S. Constitution. Petition for Writ of Certiorari, App. 76a-80a.

In conclusion, there was insurmountable record evidence to support the conclusion that the Establishment Clause of the First Amendment to the U.S. Constitution was violated several times during the lower court proceedings.

CONCLUSION

This Petition for Writ of Certiorari should be granted based on the compelling arguments asserted by Petitioners.

Respectfully submitted,

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Fla.R.Civ.P. Rule 1.510

Rule 1.510. Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, crossclaim, or third-party claim or to obtain a declaratory judgment may move for a summary judgment in that party's favor upon all or any part thereof with or without supporting affidavits at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party.

(b) For Defending Party. A party against whom a claim, counterclaim, crossclaim, or third-party claim is asserted or a declaratory judgment is sought may move for a summary judgment in that party's favor as to all or any part thereof at any time with or without supporting affidavits.

(c) Motion and Proceedings Thereon. The motion shall state with particularity the grounds upon which it is based and the substantial matters of law to be argued and shall be served at least 20 days before the time fixed for the hearing. The adverse party may serve opposing affidavits by mailing the affidavits at least 5 days prior to the day of the hearing, or by delivering the affidavits to the movant's attorney no later than 5:00 p.m. two business days prior to the day of hearing. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be

rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. On motion under this rule if judgment is not rendered upon the whole case or for all the relief asked and a trial or the taking of testimony and a final hearing is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall ascertain, if practicable, what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. On the trial or final hearing of the action the facts so specified shall be deemed established, and the trial or final hearing shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or by further affidavits.

(f) When Affidavits Are Unavailable. If it appears from the affidavits of a party opposing the motion that

the party cannot for reasons stated present by affidavit facts essential to justify opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) **Affidavits Made in Bad Faith.** If it appears to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorneys' fees, and any offending party or attorney may be adjudged guilty of contempt.

West's F.S.A. § 95.231

95.231 Limitations where deed or will on record

(1) Five years after the recording of a deed or the probate of a will purporting to convey real property, from which it appears that the person owning the property attempted to convey or devise it, the deed or will shall be held to authorize the conveyance or devise of, or to convey or devise, the fee simple title to the real property, or any interest in it, of the person signing the instrument, as if there had been no lack of seal or seals, witness or witnesses, defect in acknowledgment or relinquishment of dower, in the absence of fraud, adverse possession, or pending litigation. The instrument shall be admissible in evidence.

(2) After 20 years from the recording of a deed or the probate of a will purporting to convey real property, no person shall assert any claim to the property against the claimants under the deed or will or their successors in title.

(3) This law is cumulative to all laws on the subject matter.

West's F.S.A. § 65.061

65.061. Quieting title; additional remedy

(1) Jurisdiction. – Chancery courts have jurisdiction of actions by any person or corporation claiming legal or equitable title to any land, or part thereof, or when any two or more persons claim to own the same land, or any part thereof under a common title against all persons or corporations claiming title to or occupying the land adversely to plaintiff, whether defendants claim or hold under a common title or not, and shall determine the title of plaintiff and may enter judgment quieting the title and awarding possession to the party entitled thereto, but if any defendant is in actual possession of any part of the land, a trial by jury may be demanded by any party, whereupon the court shall order an issue in ejectment as to such lands to be made and tried by a jury. Provision for trial by jury does not affect the action on any lands that are not claimed to be in the actual possession of any defendant. The court may enter final judgment without awaiting the determination of the ejectment action.

(2) Grounds. – When a person or corporation not the rightful owner of land has any conveyance or other evidence of title thereto, or asserts any claim, or pretends to have any right or title thereto, which may cast a cloud on the title of the real owner, or when any person or corporation is the true and equitable owner of land the record title to which is not in the person or corporation because of the defective execution of any deed or mortgage because of the omission of a seal thereon, the lack of witnesses, or any defect or omission in the wording of the acknowledgment of a party or parties thereto, when the

person or corporation claims title thereto by the defective instrument and the defective instrument was apparently made and delivered by the grantor to convey or mortgage the real estate and was recorded in the county where the land lies, or when possession of the land has been held by any person or corporation adverse to the record owner thereof or his or her heirs and assigns until such adverse possession has ripened into a good title under the statutes of this state, such person or corporation may file complaint in any county in which any part of the land is situated to have the conveyance or other evidence of claim or title canceled and the cloud removed from the title and to have his or her title quieted, whether such real owner is in possession or not or is threatened to be disturbed in his or her possession or not, and whether defendant is a resident of this state or not, and whether the title has been litigated at law or not, and whether the adverse claim or title or interest is void on its face or not, or if not void on its face that it may require extrinsic evidence to establish its validity. A guardian ad litem shall not be appointed unless it shall affirmatively appear that the interest of minors, persons of unsound mind, or convicts are involved.

(3) Deraignment of title. – The plaintiff shall deraign his or her title from the original source or for a period of at least 7 years before filing the complaint unless the court otherwise directs, setting forth the book and page of the records where any instrument affecting the title is recorded, if it is recorded, unless plaintiff claims from a common source with defendant.

(4) Judgment. – If it appears that plaintiff has legal title to the land or is the equitable owner thereof based on

one or more of the grounds mentioned in subsection (2), or if a default is entered against defendant (in which case no evidence need be taken), the court shall enter judgment removing the alleged cloud from the title to the land and forever quieting the title in plaintiff and those claiming under him or her since the commencement of the action and adjudging plaintiff to have a good fee simple title to said land or the interest thereby cleared of cloud.

(5) **Recording final judgments.** – All final judgments may be recorded in the county or counties in which the land is situated and operate to vest title in like manner as though a conveyance were executed by a special master or commissioner.

(6) **Operation.** – This section is cumulative to other existing remedies.

West's F.S.A. § 692.101

692.101. Conveyances to or by trustees of unincorporated churches

(1) Every deed or other instrument transferring real property to named or unnamed trustees of a named unincorporated church, including a deed or instrument executed prior to May 21, 1986, vests title to the real property in the trustees of the named unincorporated church and their successors with full power and authority to convey and mortgage the property transferred.

(2) Every deed or mortgage of real property in this state executed by the trustees of an unincorporated church and recorded in the public records of the county in which the real property is located prior to May 21, 1986, shall be held to be a good and valid deed or mortgage transferring or encumbering the church property described in the deed or mortgage.

(3) The pastor or secretary of, or other administrative person authorized by, an unincorporated church may execute an affidavit stating the names of the trustees of the unincorporated church as of the date or dates stated in the affidavit. Such an affidavit is conclusive as to the facts stated therein as to purchasers and mortgagees without notice.

(4) This section does not apply to any conveyance or mortgage heretofore made the validity of which is contested by suit commenced within 2 years after May 21, 1986.

IN THE CIRCUIT COURT OF THE
THIRD JUDICIAL CIRCUIT IN AND FOR
MADISON COUNTY, FLORIDA

CASE NO.: 98-010-CA

W.J. SPRADLEY, JR., EDWARD CAMPBELL and VIRGINIA CAMPBELL CARDIN as Representatives of the SPRADLEY-CAMPBELL REUNION MEMORIAL, & WILLIAM J. SPRADLEY III,

Plaintiffs/Counter-Defendants,

v.

OLD HARMONY BAPTIST CHURCH, BOARD OF TRUSTEES OF THE OLD HARMONY BAPTIST CHURCH, WILLIAM BAILEY, JAMES EMORY SPRADLEY, WAYNE HEATHERLY and RODNEY WATTS,

Defendants/Counter-Plaintiffs,

v.

WILLIAM E. REAMS, as PERSONAL REPRESENTATIVE DE BONIS NON ADMINISTRATIS OF THE ESTATE OF RICHARD SAMPSON PORTER, DECEASED,

Intervenor.
_____/

PROCEEDINGS had before the Honorable R.A. Green, Senior Judge, commencing at 9:00 a.m., at the Madison County Courthouse, Madison, Florida, on Monday, the 20th day of December 1999, before Vivian Tupou, R.P.R., C.S.R., and a Notary Public in and for the State of Florida at Large.

* * *

[4] DECEMBER 20, 1999

PROCEEDINGS 10:00 A.M.

THE COURT: Good morning, gentlemen.

MR. COLLINS: Good morning, Your Honor.

MR. SPRADLEY: Good morning.

THE COURT: This is the summary judgment from Friday. This was noticed as the trial on the counter – of the complaints and counter-petitions on the issue of the title of the realty in question.

On Friday afternoon I contacted counsel. Mr. Collins was not available, but his office staff was kind enough to be on call and accept the message, and I appreciated that courtesy because she would have been within her rights to have refused. So I appreciate her willingness to cooperate for you.

You fellows may want to take a moment to read that partial summary. It's clocked in downstairs.

Nothing on the record corroborates a finding but for that Old Harmony Baptist Church, as the organization that – I think the statute uses the word extinct or disbanded, anyway the organization as the title holder to the property in the 1940s. I found nothing that indicated anything that said who the trustees were.

There was a filing of the record, an [5] attachment to the motion by intervenor, that may lend credence to the possibility that one of the trustees of the church in 1981

was the plaintiff in this case, but I did not make that connection as a matter of law.

I found no inter vivos transfer of the one-acre parcel from the county out. I found no – nothing else in there that would seem to make a – other than a matter of law as to who the owners of the three – four parcels are. And that's what I've tried to hold in this finding.

I would be interested, however, in learning, if you gentlemen can present evidence as to who the trustees of the church in 1945 when it's disbanded were.

MR. PARRIS: Judge, if I can address the Court. Before we proceed with that I'd like to present an opportunity to present a motion for rehearing on the Court's ruling on the motion for summary judgment which were ordered – the order of which was rendered telephonically on Friday, December the 17th, 1999.

THE COURT: Have at it.

MR. PARRIS: Well, the Court granted the Defendant's motion for summary judgment against the plaintiffs by telephone conference on December 17th, [6] 1999, and while the matter of reformation of the 1889 deed from R. S. Porter to J.B. Spradley has been discussed, there have not been any pleadings or amended pleadings which have been filed seeking reformation. And the only issue which was to be decided at the summary judgment hearing of December 9th, 1999 was the quiet title issue.

Before addressing the issue of reformation a pleading should have been filed seeking reformation of the deed, and to entertain the defendants' request for rehearing

violates the Florida Rules of Civil Procedure 1.120, which sets forth the requirement of fraud or mistake via established in pleadings.

The Court's election to reform the 1889 deed sua sponte amounts to an unconstitutional taking of my client's property without due process in that my clients have not been afforded notice and an opportunity to be heard on the issue of reformation. Moreover, the defendants do not have standing to advance an argument on behalf of the 1889 deed because they were not a party to that transaction. The original conveyance was between R.S. Porter and J.B. Spradley.

Moreover a trial is required in order to reform a deed – or at least the opportunity to seek [7] trial, and there is no evidence to introduce reformation or to support a claim for reformation in this case as of yet.

Finally, if I can address the issue on why the motion of summary judgment should have been denied to the defendants. I believe that the defendants own admission is that they don't have any standing – I'm sorry, that the Court found that the defendants do not have any standing to be in this suit and that they are not the same organization that existed up until about 1945, therefore they don't have any standing to bring a motion for summary judgment.

Also the evidence presented by W.J. Spradley, Jr. has been uncontradicted in that his ancestors had possession of the property beginning in 1885 and that they exercised exclusive possession to all or parts of the property up through 1939 and paid taxes on all the property up through 1952.

Mr. Zant admitted on the record that one acre, the one acre which is to be distributed, or for which the determination of ownership is being sought today or being directed by the Court today, Mr. Zant admitted that that one acre had in fact been adversely possessed by the ancestors of my client, W.J. Spradley, Jr.

[8] The Spradley family has continued to possess the four acres which are being disputed since 1885 as evidenced by the bond between R.S. Porter and J.B. Spradley. And during that time that the Spradley family was in possession, from 1885 henceforth, the Spradley family has paid taxes and exclusively possessed the property through the present.

There's evidence that has been uncontradicted in the plaintiff's motion for summary judgment that the parcel of land that the church occupied was abandoned in 1945, and that the Spradley family exercised exclusive dominion and control from that date forward. This was supported by W.J. Spradley, Jr.'s deposition, which was attached to the motion for summary judgment, and which to date has been uncontradicted.

The Court had not made any finding regarding whether or not the elements of adverse possession could be satisfied prior to the 1939 and 1945 requirements. That is precisely the time during which the plaintiffs seek to establish that he in fact had adversely possessed the property.

And with regards to the element of tacking – I didn't get a chance to copy the case – but I did bring the Florida Jury which addresses tacking and [9] which states that

tacking is permitted by an adverse possessor to a prior possessor's claim of the property.

I could cite the case for the record. It's Kendrick versus Latham, 25 Florida 819, and there's a Kubler versus Rogers, 25 Florida, 853. Okeechobee Company v. Norton, 145 Florida, 417. Palm Orange Groves v. Yelvington, 41 So2d, 883.

THE COURT: Those cases stand for the proposition that?

MR. PARRIS: That the doctrine of tacking has been adopted in Florida. Continuous adverse possession as required by law may be accomplished by parol agreement or understanding, under which actual possession of the premises is delivered, as well as by written instrument of conveyance.

Basically they're saying that if successive possessions can be in privity with each other, that they can be used – they can be tacked together and the most recent holder of the property can assert the claim of adverse possession that could have been asserted by the predecessor holder, preceding holder.

I guess basically, Judge, we're asking that the Court grant the motion for rehearing and allow us an opportunity to submit legal memoranda addressing [10] the issue of reformation and requirements thereof in order that we can proceed accordingly.

THE COURT: Does anyone else want to be heard?

MR. COLLINS: Just in response, Your Honor, I would object to their motion for rehearing on notice. It

wasn't scheduled for today. It's an ore tenus and I just want to protect the record in that regard. And I object to the factual recitations that they make regarding facts that were made at the hearing.

That's all I've got to say.

THE COURT: Mr. Zant?

MR. ZANT: On the issue of tacking, I don't see where that has anything to do with the case because the church was in possession up until 1945, and so there could be no tacking prior to that because they could not apply the same piece of property. So that's irrelevant.

In other words, if the church was in possession of the property he could not tack back on any property, especially because there was none.

THE COURT: The only part that was a concern in that regard, Mr. Zant, was – well, let me start by saying first, it's ironic that the plaintiff complains [11] about the reformation of the deed that clears his predecessor's title to the hundred and fifty-six acres that was conveyed in 1986, but of course he didn't do that.

It seemed to me clear from the record that with the bond, the deed of 1889 could be defined to make it other than an invalid deed for lack of describing the four-acre reservation. That, read together with the deed by Porter to Madison County of 1901, I believe it was, oh one, led a surveyor to find on the ground what the three parcels were indeed.

And the effect of this judgment is to relate that back together and say that with that, Porter's deed to Spradley of 1889 makes sense and conveys definable property. And

at that time the four acres was reserved by that deed and referred to in the bond, which as I read it is a fancy word for saying a purchase – perhaps a contract for deed given some five years earlier by plaintiff's grandfather to Porter.

So if you relate forward you have then the hundred fifty-six acres with a definable four acres out. The definable four acres with the bond has recited two acres for the church, two acres reserved for Porter. That went on to 1901 when Porter conveyed [12] one acre for the school, to Madison County Board of Public Instruction.

So the only shady – meaning the hardest parcel to really figure out is the one acre remaining and the reservation to Porter, and that's a close question. Whether it went to Porter's heirs at the time of Porter's death or whether someone in this action should be allowed to establish a title to that by adverse possession without color of title prior to 1939.

Now to the extent the thing that's been said that gives me cause to say perhaps it would make sense to do, would be litigate the issue of title to that one-acre piece, allowing plaintiff, if plaintiff can show an adverse possession without color of title against the heirs of Porter and have a full-blown trial on that one sub-issue.

But none of that attacks the question of the greatest part of this controversy, which is the ownership of the two acres reserved in the deed as reformed to Porter to Old Harmony Baptist Church. And I found nothing in the record that I read that connected the defendant's Old Harmony Baptist Church to the people that went back in possession in the nineties and attempted to hold services

there. It [13] connects them as being the same religious organization as was Old Harmony that disbanded in 1945.

And I think Chapter 692 is clear that the trustees of an extinct religious organization have the authority to convey or come to title of the church property. So it seemed to me to follow that in that case those trustees would be at least the owners in trust for the interest of the extinct religious organization.

Now, I don't know who those trustees were. That's why in this motion – this order of summary I asked to find the identity of the heirs of Richard Sampson Porter as they existed at the time of his death and the identity of the trustees of the Old Harmony Baptist Church as it existed at the time of its extinction. I said around 1947. We're talking about 1945, 1946.

There's something in the record. The Baptist Association showed that it was no longer a member as of a certain date. This –

MR. PARRIS: Forty-five.

THE COURT: Forty-five. All right. That would be the obvious date I would use.

MR. PARRIS: Judge, can I – not to interrupt you, but in your order it says 1947. Can we [14] just on the record clarify in Paragraph 5, 1945? And I think that's relevant in that 1945 – actually it was 1946, January 1, 1946 was the year that the legal description filing requirement was codified in the Florida Statutes.

If Your Honor reconsiders the motion for summary judgment that could have an effect on how we present

our claim with regards to the requirement not being necessary to establish adverse possession prior to that time. There was a window of time during which the church became extinct in 1945 and the time that the statute went into effect, and my clients. If the Court accepts that my clients were in possession during that window of time the exclusivity element of adverse possession can be satisfied along with everything else, notwithstanding any other arguments that could be made prior to that time.

THE COURT: I'm going to leave the order as it stands. I wanted to explain my rationale in doing so.

I'd like to also point out that the Campbell family reunion lease by plaintiff was ineffectual to convey record interest in that group as against the found-to-be-true owners, and I will go into my rationale for doing that if necessary, but I won't [15] unless it's necessary.

MR. PARRIS: I just wanted to clarify: I believe that the Campbell – the Campbell family reunion was listed initially because the complaint was for injunctive relief.

THE COURT: I understand.

MR. PARRIS: Quiet title was in Spradley.

THE COURT: Can you fellows help me determine who the trustees were at the time the church gave up?

MR. COLLINS: I can try, Your Honor.

* * *

[18] I was thinking when I was thinking this through, if this had been a Catholic congregation or a Catholic church, having some Catholic blood in me, they would certainly never have let that piece of property be wasted. It probably would have been a youth park or – I mean, you know, but when we have congregational, like Baptists, when one congregation ceases to exist, unless there's been action taken pursuant to the statutes that this Court's already seen, 6117-2004 and 2003, you know, then that property just sits there.

And then when a problem like this presents itself this court's had to deal with it. We have to take the best title we can, and I will submit to the Court that if this Court will consider at the proper time that we would put Mr. Bailey under oath and question him regarding his participation as a member of that church, his baptism, his recollection of who was present and let that form the evidentiary basis to reform that title pursuant to 692.101.

That's all I've got.

[19] THE COURT: Mr. Zant?

MR. ZANT: I would like to add to what Mr. Collins has said in the way of enlightenment as opposed to the Baptist way of doing –

THE COURT: Tell him about it.

MR. ZANT: – as opposed to what the law says, and the law is really outside of the whole question of what the Baptists do. That's the wall of separation.

There's one point that we all – the Baptists are really hard on, and that is the trustees only hold title. They act on orders from the congregation. The Baptists are – they

go on the Bible verses of where two or three are gathered together, that is the congregation. And they're free to form anywhere at anytime.

Now, we weren't able to find any law except what we have in our – this is not law, but this is in the title notes for insuring title, and the attorney's title notes say that for issuing the following policy and beneficiaries are entitled to proceed promptly and must be – in an action properly brought against all the heirs – well, that doesn't apply.

It says the transfer of title into the name of an unincorporated church is not addressed in [20] Section 692.101, which is what he has.

Now, it goes on to say the title to such congregation – the title is vested in the congregation as a whole.

THE COURT: Well, let me ask Mr. Parris for his enlightenment on that.

MR. PARRIS: First, just for the record, I'd like to make an objection to the Court taking judicial notice of the hierarchical/congregational makeup of the organization of the Harmony Baptist Church which went out of existence in 1945, or for that matter any Baptist association. I think that's a question of ecclesiastical consideration which the Court – going along with what Mr. Zant said – might be crossing the separation powers line if it were to adjudicate upon or let alone take judicial notice of.

* * *

[23] MR. SPRADLEY: Right, and they have copies of those minutes.

THE COURT: So the minutes stop nine years, [24] ten years before the church allegedly disbanded.

MR. SPRADLEY: And also reviewing the minutes myself, I'm not aware of the word trustee or any reference to trustees or leadership positions in the minutes. They make reference to messengers going to conventions and different preachers and that appears to be – besides having committees to do special projects here and there, a couple of committees, but they don't ever mention trustees in my review of the minutes from – beginning in the 1840s up until 1936.

So if they had trustees from 1936 to 1945, I'm not aware of any trustees.

THE COURT: I accept your representation.

MR. ZANT: Could I just say one more –

THE COURT: Sure.

MR. ZANT: – thing to enlighten the subject.

THE COURT: Put some more light on the subject, Mr. Zant.

MR. ZANT: All right. I think it can be established at least as a congregational church. We have two cases on a Baptist church, and those cases I'll recite them to you, and I'll also give them to you.

Parton versus Tucker, 172 So.2d – I'm [25] sorry, just plain Southern, Page 89. And First Independent Missionary Baptist Church versus McMillan, 153 So.2d, 337.

The enlightenment of these cases is that if a Baptist church has a visiting preacher, visiting that church, the courts can decide who has the right to the property between those visits. It can go that far. You have to have some way of deciding property rights.

THE COURT: That's right, and it goes with the majority.

MR. ZANT: Right, but it cannot decide – say this is in light of the separation of church and state, you can't decide which congregation, between two outside congregations. That is a Baptist thing, and that is a danger that we don't want to cause to happen if we can possibly help it.

THE COURT: Tell me something, Mr. Zant, you filed a motion, and I've forgot what the pleading was, and you attached to it a document from Buckeye Cellulose to the trustees of Old Harmony Baptist Church, and J.W. Spradley was named as one of those trustees.

MR. ZANT: That's right.

THE COURT: And the others were Campbells as

* * *

[30] Baptist and I want to be in this pot too, seeing who gets this old property. Where would you stop, Mr. Zant?

MR. ZANT: Well –

THE COURT: See, that's my point. I can offer two types of proof. Well, one type of proof and two people. Bailey and Spradley as to Old Harmony one. Who

was in it originally? I've also had it represented that the documents don't reflect anything post-1936.

So, I guess what we ought to do is hear the testimony of Mr. Bailey and Mr. Spradley as to who was in the congregation when it disbanded, and I think probably because of the lateness of the notice of the summary judgment motion it would be cricket to give either side additional time to produce additional testimony about the original congregation.

I'm wondering, would there be anything to be gained by trying to – put something in the paper and ask people who may have been members of the Old Harmony Baptist Church in the forties to come forward and contact the clerk of court or something and see –

MR. COLLINS: Your Honor, I think that that might be a good idea, but my brief experience in this case most of the people who are survivors of that [31] congregation are sitting in this room right now on both sides of the table. From my experience from the testimony and –

THE COURT: Are you suggesting there may not be more than two people, Mr. Collins? I misunderstood you. I thought you said there were only two people –

MR. COLLINS: Well, I'm talking – may I finish? What I'm saying is, is of that original congregation it's our position that William Bailey was baptized in that church, defining him as a real member of that congregation. But as to other people who were perhaps residents of this county, while your suggestion is a good idea, I personally believe based on the discovery you're going to find everyone who's had an interest or knew someone, or

who is a descendant or relative is here. You've got them here in this room.

THE COURT: Mr. Zant?

MR. ZANT: The thing that stands out about Mr. Bailey though, that he never loses his membership.

MR. COLLINS: Right, that's a good point.

THE COURT: Okay?

MR. PARRIS: Judge, earlier the Court indicated that we might take a break. Before we do that I'd just like to leave the Court with a parting

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[33] can round up any other folks that might have some wisdom that they might be able to impart. Otherwise – did you want to go ahead?

W.J. SPRADLEY, JR.,

called as a witness herein by the Court, having been first duly sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q I'm calling Mr. Spradley as a court witness. Would you state your name and address, please.

A W.J. Spradley, Jr., Route 1, Box 90, Greenville, Florida.

Q You are the party plaintiff in this case, are you not, sir?

A Yes, sir.

Q You've been present during the morning today where the conversation about Old Harmony Baptist Church one was discussed?

A Right.

Q Can you give us the benefit of your information, if you have any, about that congregation? Specifically, were you a member of that congregation?

A I was.

[34] Q Were you baptized in that church?

A I don't recall being baptized because I was about ten or twelve years of age, so it's hard for me remember, but I was a member of the regulars.

Q Where were you baptized, sir?

A I was baptized in Oklahoma.

Q And did you transfer here from Oklahoma?

A Well, not yet, no. Not to a local church, no.

Q I see. Was your baptism in Oklahoma before you were ten or after –

A After I was in the military.

Q I see. Later? Okay. And in 1945, or thereabouts, what was your connection with the Old Harmony Baptist Church?

A I was just a member, and it was on our – there was church services being held once a month and we attended services there on Sundays and Sunday nights.

Q And by your best memory, when was that place no longer used – when I say place, I mean the old church – as a house of worship?

A It was somewhere in the forties. Nineteen forty-five, I believe it was, whatever the last time it says.

[35] Q You were in the military what years?

A Forty-eight through sixty-nine.

Q This would have been before you went to the military.

A Yes, sir.

Q And you began to attend there when you were ten or thereabouts, but you were later baptized in Oklahoma, I gather when you were in the service.

A Yes.

Q How old were you when you were baptized?

A I was about I believe – twenty-seven years old.

Q Were you – if you started attending when you were ten, I presume there were other people that attended in your family.

A Yes, sir.

Q Do you remember any of those who are still living?

A Yes, sir.

Q Could you give us some names?

A All right. There's one that's Marjie Henderson, which was – she's still living, South Bay. There's an Idavee Lambert, Texas, she's still living. Jackie O'Quinn in Motley, Florida, she's still living. There's an R. D. Spradley in Liberty, Texas, he's [36] still living. There's a Gwen Varela in West Palm Beach and she's still living.

Q And were some of these folks relatives of yours?

A Yes, they're all sisters, sisters and brothers and –

Q Do you recall at age ten – it might be hard – who the preacher was at Old Harmony?

A Well, there was some preachers that would come in on a regular – one of them was – I had an uncle that was a Reverend John Vann that preached there regularly in the early thirties, but he's the one that sort of – made me go to church I suppose when I was a young lad, and he was my uncle. And then there was Duffit (phonetic) Henry and then there was a couple more that came through, but recalling their names right now – I can't recall the names, but there was people that would come in for one month at a time.

Q And, Mr. Spradley, what is your date of birth?

A 5/24/32.

THE COURT: Does either party have questions in furtherance of the Court's questions?

MR. SPRADLEY: I have some questions, Your Honor.

* * *

[39] WILLIAM BAILEY,

called as a witness herein by the Court, having been first duly sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q State your name and address, please, sir?

A William Bailey, Route 1, Box 8, Lamont, Florida.

THE COURT: Let the record reflect Mr. Bailey is called as a Court witness.

BY THE COURT:

Q Mr. Bailey, were you at any time a member or did you attend the church called Old Harmony one?

A Yes, sir.

Q What was your connection, if any, with the church?

A Well, I was just a member, going to church, back in about '38, '39, somewhere around that, but I went there ever since I was – rightly before I was born, if you want to call it with my mother taking me.

Q What is your date of birth?

A Twenty-eight, 6/14/28.

Q Twenty-eight? So you are probably four years older than Mr. Spradley who just testified.

A Well, I imagine. I don't know – when was [40] he born?

Q I think he testified in 1932.

A Thirty-two? I was born in '28.

Q All right. Now, when and where were you baptized?

A Old Harmony Church in Alligator Creek.

Q When was that?

A Well, that was about – I was about I guess a ten- or twelve-year-old. I guess about '38, somewhere around there, '38 or '39.

Q When did you cease to attend Old Harmony Baptist Church?

A Whenever it closed.

Q When was that?

A I believe whatever they got on record, about '45 or '46, something like that.

Q If you hadn't heard the record of when it happened, how would you estimate when it closed?

A Pardon?

Q Is there something in your life that makes you feel that '45 or '46 was when it closed?

A Well, that's all I know of, '45 or '46.

Q Let me put it a different way.

A I don't know any other way I –

Q Sometimes we remember something happening, [41] but remember something going on in our life that

helps us remember when it did happen. And my question to you is, is there anything that touches your memory that makes you feel that '46 or '45 was when Old Harmony disbanded? Do you remember anything else that happened about the same time?

A Well, not really, no more than I know it closed.

Q Were you in the armed forces during the Second World War?

A Yeah.

Q What was the date of your service?

A 1950 to '52.

Q Fifty and '52. So in the forties you were not in the service.

A No, sir. I was drafted in 1950 and '52.

Q Korea.

A Korean conflict.

Q Okay. What did you do after you – let me ask it a different way. When the church quit meeting there, where did you start attending?

A I didn't attend anymore.

Q No other church?

A No, I didn't go. I left and went down to Miami, Fort Lauderdale.

[42] Q Did you move your letter to Miami?

A I moved there but I didn't go in no church down there.

Q You did not move your letter to Miami?

A No, sir, I did not move anything. It all stayed just like it was.

Q Where do you attend now?

A Where do I attend now? Old Harmony Church, the one that was tore down. They have a tent out there.

Q Where did you attend from the time you came back from Miami till you started attending out there?

A Well, I didn't go at the time when I first come back.

Q When did you come back?

A In 19 and 95, something like that, '94, I moved back home. It wasn't long after that that they got it organized and started.

Q When you last attending in the forties, who else was regular in church when you were there?

A Well, there was my family, the Spradley family. Brothers and sisters, a lot of them. There was people from all over the country around there that was in that.

Q How big was the church in number of people?

[43] A Oh Christ, I was it – I don't know what the numbers was when I was attending there small. They couldn't even get inside the building. They was standing out looking in the windows. There was probably hundreds there at times.

Q And who was the preacher in 1945 that you recall?

A Well, I don't recall who the preacher was. All I know we had Preacher Lordon (phonetic), Brother Vann and Brother Koker, and I don't know who else was in and out.

Q Is it accurate that your letter has never been moved from Old Harmony one?

A It's never been moved.

THE COURT: Cross by either party?

CROSS-EXAMINATION

BY MR. COLLINS:

Q Where is Alligator Creek in relation to Old Harmony Baptist Church?

A Oh, about a quarter of a mile or half a mile north of Old Harmony Church on 150.

Q And could you describe how that baptism took place in your own words for the Court, how you were [44] baptized?

A Well, you just went and you walked in and they said a little prayer and turned you over backwards and held their hand over your mouth and nose to keep the water from going in, and stuck your head under and raised you back up.

Q Do you recall who did that to you back then?

A No, I don't recall who it was 'cause I was rather young.

MR. COLLINS: No further questions.

CROSS-EXAMINATION

BY MR. ZANT:

Q Was there other people baptized along with you?

A Well, there was a lot of other people. A lot of young people like I was, different ages.

Q Baptized –

A Sometimes – all the time there was people baptized there.

Q Do you remember who was baptized along with you or –

A No, I don't. Not at that time, I don't remember who it was.

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[47] anybody –

THE WITNESS: Well, a lot of them is dead and gone and a lot of the names I can't remember.

THE COURT: Well, Mr. Bailey –

THE WITNESS: That's been a long period of time.

THE COURT: Well, I know it, and I know I have seen your moments, and I'm not accusing you. But what I

want you to do is right your mind as best you can, just as best you can, to remember people who attended the church about the time it broke up that you were there, and then make a note which ones you know have passed on, because there's going to be a lot of those. And I want to see if you remember anybody besides those who passed on.

And, Mr. Spradley, let me ask you to do the same thing. And then at one o'clock maybe get you to give me those lists by testimony. Fair enough?

MR. BAILEY: Well, I'll see what I can do.

THE COURT: And I'd like to make an announcement for the record. I was raised in the First Baptist Church of Starke. I was baptized there. I was a deacon in the First Baptist Church of Gainesville. Both were – and I assume still are – members at the time I was of the Southern Baptist [48] Convention.

I mention that only to say to these folks, that when you're talking Baptist religion and the denominational rulings of the church, I have some personal dealings of those.

I'm now attending and a member of the First United Methodist Church of Starke.

Do you have other witnesses?

MR. COLLINS: Your Honor, all we would have, and I would just proffer first also for time, is we do have Martha Bell Bailey who attended the church as a five year old and only remembers being there one time. I don't know if that's helpful to the court. If it's not –

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[49] MR. COLLINS: Your Honor, may I ask a question, just so I know? I think I know where the Court is headed. I think –

THE COURT: Where do you think the Court is headed?

MR. COLLINS: We're trying to recreate a [50] congregation that existed at that time that had trustees so we can vest title in them?

THE COURT: No, no. We're probably trying to find out who was there so I can appoint some trustees.

MR. COLLINS: Okay. I just – and then under the statute, 692.101, let's say – ahead of ourselves – we aren't able to. I believe the statute could still allow you to vest title in unnamed trustees even if you couldn't, wouldn't it? I think so.

THE COURT: What is that statute?

MR. COLLINS: Conveyances to or by trustees of unincorporated churches.

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IN THE CIRCUIT COURT OF FLORIDA
THIRD JUDICIAL CIRCUIT, IN AND FOR
MADISON COUNTY.

CASE NO.: 98-010-CA

W. J. SPRADLEY, JR., and EDWARD CAMPBELL and VIRGINIA CAMPBELL CARDIN as Representatives of the SPRADLEY-CAMPBELL REUNION MEMORIAL,

Plaintiffs/Counter-Defendants,

vs.

OLD HARMONY BAPTIST CHURCH, BOARD OF TRUSTEES OF THE OLD HARMONY BAPTIST CHURCH, WILLIAM BAILEY, JAMES EMORY SPRADLEY, WAYNE HEATHERLY and RODNEY WATTS,

Defendants/Counter-Plaintiffs,

vs.

WILLIAM E. REAMS, as PERSONAL REPRESENTATIVE DE BONIS NON ADMINISTRATIS OF THE ESTATE OF RICHARD SAMPSON PORTER, DECEASED,

Intervenor.

HEARING ON MOTIONS

This cause came on for hearing on various motions before the Honorable R. A. Green, Jr., Senior Circuit Judge, in open court at the Columbia County Courthouse, Lake City, Florida, commencing at 10:00 a.m. on May 5, 2000.

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[75] land, then that fits right into the old adverse possession thing. That's right, if it's yours, you've got to cultivate it and you've got to maintain it and you've got to stay with it. The law says that.

Because if another man comes in and for 45 years he takes over and he takes care of it and he preserves it and he spends his money in it, the law of adverse possession says –

THE COURT: It doesn't in this court when the possessor – when the owner is a church.

MR. BULLOCK: And that church ceased to exist in 1845 – I'm sorry, in 1945. And no member of that congregation for 40 years went out there to take care of it. No member, for 40 years, went out there to clean the headstones or do anything.

The reunion people –

THE COURT: That argument is still an argument for the good faith of the people involved. And I'm – I think I know where I'm going, but I want to give everybody a shot at this.

Mr. Zant, you've been awfully quiet this morning.

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